

By: Wohlgemuth, Heflin

H.B. No. 2292

A BILL TO BE ENTITLED

AN ACT

relating to the provision of health and human services in this state, including the powers and duties of the Health and Human Services Commission and other state agencies; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. ORGANIZATION OF THE HEALTH AND HUMAN SERVICES

COMMISSION AND HEALTH AND HUMAN SERVICES AGENCIES

SECTION 1.01. (a) Section 531.001(4), Government Code, as amended by Chapters 53, 957, and 1420, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(4) "Health and human services agencies" includes the:

(A) Interagency Council on Early Childhood Intervention;

(B) Texas Department on Aging;

(C) Texas Commission on Alcohol and Drug Abuse;

(D) Texas Commission for the Blind;

(E) Texas Commission for the Deaf and Hard of Hearing;

(F) Texas Department of Health;

(G) Texas Department of Human Services;

(H) Texas Department of Mental Health and Mental Retardation;

(I) Texas Rehabilitation Commission;

(J) Department of Protective [~~and Regulatory~~]

1 Services; ~~and~~

2 (K) Texas Health Care Information Council;

3 (L) Department of Supportive Services; and

4 (M) Department of Health Services.

5 (b) Effective on the date the agencies listed in Section
6 1.25 of this article are abolished as provided by that section,
7 Section 531.001(4), Government Code, as amended by Chapters 53,
8 957, and 1420, Acts of the 77th Legislature, Regular Session, 2001,
9 is reenacted and amended to read as follows:

10 (4) "Health and human services agencies" includes the:

11 (A) Department of Supportive Services
12 [~~Interagency Council on Early Childhood Intervention~~];

13 (B) Department of Health Services [~~Texas~~
14 ~~Department on Aging~~]; and

15 (C) [~~Texas Commission on Alcohol and Drug Abuse,~~

16 [~~(D) Texas Commission for the Blind,~~

17 [~~(E) Texas Commission for the Deaf and Hard of~~
18 ~~Hearing,~~

19 [~~(F) Texas Department of Health,~~

20 [~~(G) Texas Department of Human Services,~~

21 [~~(H) Texas Department of Mental Health and Mental~~
22 ~~Retardation,~~

23 [~~(I) Texas Rehabilitation Commission,~~

24 [~~(J)] Department of Protective [~~and Regulatory~~~~

25 Services[~~, and~~

26 [~~(K) Texas Health Care Information Council~~].

27 SECTION 1.02. Section 531.004, Government Code, is amended

1 to read as follows:

2 Sec. 531.004. SUNSET PROVISION. The Health and Human
3 Services Commission is subject to Chapter 325 (Texas Sunset Act).
4 Unless continued in existence as provided by that chapter, the
5 commission is abolished and this chapter expires September 1, 2009
6 [~~2007~~].

7 SECTION 1.03. Section 531.0055, Government Code, is amended
8 to read as follows:

9 Sec. 531.0055. COMMISSIONER: GENERAL RESPONSIBILITY FOR
10 [~~RELATING TO CERTAIN FUNCTIONS OF~~] HEALTH AND HUMAN SERVICES
11 AGENCIES. (a) In this section and in Section 531.0056, "agency
12 director" [~~+~~

13 [~~(1) "Agency director"~~] means the [~~director,~~
14 ~~executive director, or~~] commissioner of a health and human services
15 agency.

16 [~~(2) "Policymaking body" means the board or commission~~
17 ~~with policymaking authority over a health and human services~~
18 ~~agency.~~]

19 (b) The commission shall:

20 (1) supervise the administration and operation of the
21 Medicaid program, including the administration and operation of the
22 Medicaid managed care system in accordance with Section 531.021;

23 (2) perform [~~supervise~~] information systems planning
24 and management for health and human services agencies under Section
25 531.0273, with:

26 (A) the provision of information technology
27 services at health and human services agencies considered to be a

1 centralized administrative support service either performed by
2 commission personnel or performed under a contract with the
3 commission; and

4 (B) an emphasis on research and implementation on
5 a demonstration or pilot basis of appropriate and efficient uses of
6 new and existing technology to improve the operation of health and
7 human services agencies and delivery of health and human services;

8 (3) monitor and ensure the effective use of all
9 federal funds received by a health and human services agency in
10 accordance with Section 531.028 and the General Appropriations Act;
11 [~~and~~]

12 (4) implement Texas Integrated Enrollment Services as
13 required by Subchapter F, except that notwithstanding Subchapter F,
14 determining eligibility for benefits under the following programs
15 is the responsibility of and must be centralized by the commission:

16 (A) the child health plan program;

17 (B) the financial assistance program under
18 Chapter 31, Human Resources Code;

19 (C) the medical assistance program under Chapter
20 32, Human Resources Code;

21 (D) the nutritional assistance programs under
22 Chapter 33, Human Resources Code;

23 (E) Supplemental Security Income (SSI) (42
24 U.S.C. Section 1381 et seq.) and its subsequent amendments, to the
25 extent permitted by federal law;

26 (F) long-term care services, as defined by
27 Section 22.0011, Human Resources Code; and

1 (G) community-based support services identified
2 or provided in accordance with Section 531.02481; and

3 (5) implement programs intended to prevent family
4 violence and provide services to victims of family violence.

5 (c) The [~~After implementation of the commission's duties~~
6 ~~under Subsection (b), the~~] commission shall implement the powers
7 and duties given to the commission under Sections 531.0246,
8 531.0247, 2155.144, [~~as added by Chapter 1045, Acts of the 75th~~
9 ~~Legislature, Regular Session, 1997,~~] and 2167.004.

10 (d) After implementation of the commission's duties under
11 Subsections (b) and (c), the commission shall implement the powers
12 and duties given to the commission under Section 531.0248. Nothing
13 in the priorities established by this section is intended to limit
14 the authority of the commission to work simultaneously to achieve
15 the multiple tasks assigned to the commission in this section, when
16 such an approach is beneficial in the judgment of the commission.
17 The commission shall plan and implement an efficient and effective
18 centralized system of administrative support services for health
19 and human services agencies. The performance of administrative
20 support services for health and human services agencies is the
21 responsibility of the commission. The term "administrative support
22 services" includes, but is not limited to, strategic planning and
23 evaluation, audit, legal, human resources, information resources,
24 purchasing, contract management, financial management, and
25 accounting services.

26 (e) Notwithstanding any other law, the commissioner shall
27 adopt rules and policies for the operation of and provision of

1 health and human services by the health and human services
2 agencies. In addition, the commissioner, as necessary to perform
3 the functions described by Subsections (b), (c), and (d) in
4 implementation of applicable [the] policies established for an
5 agency by the commissioner [~~each agency's policymaking body~~],
6 shall:

7 (1) manage and direct the operations of each health
8 and human services agency; and

9 (2) supervise and direct the activities of each agency
10 director.

11 (f) The operational authority and responsibility of the
12 commissioner for purposes of Subsection (e) at each health and
13 human services agency includes authority over and responsibility
14 for the:

15 (1) management of the daily operations of the agency,
16 including the organization and management of the agency and agency
17 operating procedures;

18 (2) allocation of resources within the agency,
19 including use of federal funds received by the agency;

20 (3) personnel and employment policies;

21 (4) contracting, purchasing, and related policies,
22 subject to this chapter and other laws relating to contracting and
23 purchasing by a state agency;

24 (5) information resources systems used by the agency;

25 (6) location of agency facilities; and

26 (7) coordination of agency activities with activities
27 of other state agencies, including other health and human services

1 agencies.

2 (g) Notwithstanding any other law, the operational
3 authority and responsibility of the commissioner for purposes of
4 Subsection (e) at each health and human services agency includes
5 the authority and responsibility to adopt or approve, subject to
6 applicable limitations, any rate of payment or similar provision
7 required by law to be adopted or approved by the agency.

8 (h) For each health and human services agency, the
9 commissioner shall implement a program to evaluate and supervise
10 the daily operations of the agency. The program must include
11 measurable performance objectives for each agency director and
12 adequate reporting requirements to permit the commissioner to
13 perform the duties assigned to the commissioner under this section.

14 (i) To facilitate the operations of a health and human
15 services agency in accordance with this section, the commissioner
16 may delegate a specific power or duty given under Subsection (f) or
17 (g) to an agency director. The agency director acts on behalf of
18 the commissioner in performing the delegated function and reports
19 to the commissioner regarding the delegated function and any matter
20 affecting agency programs and operations.

21 (j) The commissioner shall [~~may~~] adopt rules to implement
22 the commissioner's authority under this section.

23 (k) The commissioner and each agency director shall enter
24 into a memorandum of understanding in the manner prescribed by
25 Section 531.0163 that:

26 (1) clearly defines the responsibilities of the agency
27 director and the commissioner, including:

1 (A) the responsibility of the agency director to
2 report to the governor and to report to and implement policies of
3 the commissioner; and

4 (B) the extent to which the agency director acts
5 as a liaison between the agency and the commission;

6 (2) establishes the program of evaluation and
7 supervision of daily operations required by Subsection (h); and

8 (3) describes each delegation of a power or duty made
9 under Subsection (i) or other law.

10 (1) Notwithstanding any other law, the commissioner
11 ~~[provision of this section, a policymaking body]~~ has the authority
12 ~~[provided by law]~~ to adopt policies and rules governing the
13 delivery of services to persons who are served by each health and
14 human services ~~[the]~~ agency and the rights and duties of persons who
15 are served or regulated by each ~~[the]~~ agency. ~~[The commissioner and~~
16 ~~each policymaking body shall enter into a memorandum of~~
17 ~~understanding that clearly defines:~~

18 ~~[(1) the policymaking authority of the policymaking~~
19 ~~body; and~~

20 ~~[(2) the operational authority of the commissioner.]~~

21 SECTION 1.04. Section 531.0056, Government Code, is amended
22 to read as follows:

23 Sec. 531.0056. APPOINTMENT ~~[EMPLOYMENT]~~ OF AGENCY DIRECTOR
24 BY GOVERNOR. (a) The governor shall appoint an agency director for
25 each health and human services agency. ~~[This section applies only~~
26 ~~to an agency director employed by the commissioner.]~~

27 (b) The agency director shall serve for a term of one year.

1 ~~[An agency director employed by the commissioner may be employed~~
2 ~~only with the concurrence of the agency's policymaking body and the~~
3 ~~approval of the governor.]~~

4 (c) In addition to the requirements of ~~[As established in]~~
5 Section 531.0055(k)(1), the memorandum of understanding required
6 by that section must ~~[the commissioner and agency director shall~~
7 ~~enter into a memorandum of understanding that]~~ clearly define
8 ~~[defines]~~ the responsibilities of the agency director ~~[and may~~
9 ~~establish terms and conditions of employment in the memorandum of~~
10 ~~understanding].~~

11 (d) The terms of the memorandum of understanding shall
12 outline specific performance objectives, as defined ~~[jointly]~~ by
13 the commissioner ~~[and the policymaking body]~~, to be fulfilled by
14 the agency director, including the performance objectives outlined
15 in Section 531.0055(h).

16 (e) Based upon the performance objectives outlined in the
17 memorandum of understanding, the commissioner shall perform an
18 employment evaluation of the agency director.

19 (f) The commissioner shall submit the evaluation~~[, along~~
20 ~~with any recommendation regarding the employment of the agency~~
21 ~~director,]~~ to the ~~[agency's policymaking body and the]~~ governor not
22 later than January 1 of each even-numbered year.

23 ~~[(g) The policymaking body shall consider the evaluation in~~
24 ~~a meeting of the policymaking body and take necessary action, if~~
25 ~~any, not later than 90 days after the date of the receipt of the~~
26 ~~evaluation.~~

27 ~~[(h) An agency director employed by the commissioner serves~~

1 ~~at the pleasure of the commissioner but may be discharged only with~~
2 ~~the concurrence of the agency's policymaking body.]~~

3 SECTION 1.05. Section 531.008, Government Code, is amended
4 to read as follows:

5 Sec. 531.008. DIVISIONS OF COMMISSION. (a) Subject to
6 Subsection (c), the [~~The~~] commissioner may establish divisions
7 within the commission as necessary for effective administration and
8 for the discharge of the commission's functions.

9 (b) Subject to Subsection (c), the [~~The~~] commissioner may
10 allocate and reallocate functions among the commission's
11 divisions.

12 (c) The commissioner shall establish the following
13 divisions and offices within the commission:

14 (1) the eligibility services division to make
15 eligibility determinations for services provided through the
16 commission or a health and human services agency related to:

17 (A) the child health plan program;

18 (B) the financial assistance program under
19 Chapter 31, Human Resources Code;

20 (C) the medical assistance program under Chapter
21 32, Human Resources Code;

22 (D) the nutritional assistance programs under
23 Chapter 33, Human Resources Code;

24 (E) Supplemental Security Income (SSI) (42
25 U.S.C. Section 1381 et seq.) and its subsequent amendments, to the
26 extent permitted by federal law;

27 (F) long-term care services, as defined by

1 Section 22.0011, Human Resources Code; and

2 (G) community-based support services identified
3 or provided in accordance with Section 531.02481;

4 (2) the office of inspector general to conduct audits
5 and perform fraud and abuse investigation and enforcement functions
6 as provided by Subchapter C and other law;

7 (3) the office of the ombudsman to:

8 (A) provide dispute resolution services for the
9 commission and the health and human services agencies; and

10 (B) perform consumer protection functions
11 related to health and human services;

12 (4) a purchasing division as provided by Section
13 531.017;

14 (5) the office for the blind to provide and coordinate
15 programs for the treatment, rehabilitation, and benefit of persons
16 who are blind or visually impaired;

17 (6) the office for the deaf and hard of hearing to
18 provide and coordinate programs for the treatment, rehabilitation,
19 and benefit of persons who are deaf or hard of hearing; and

20 (7) the office of rehabilitation services to provide
21 and coordinate programs for the rehabilitation of persons with
22 disabilities so that they may prepare for and engage in a gainful
23 occupation or achieve maximum personal independence.

24 SECTION 1.06. Subchapter A, Chapter 531, Government Code, is
25 amended by adding Sections 531.0161, 531.0162, and 531.0163 to read
26 as follows:

27 Sec. 531.0161. NEGOTIATED RULEMAKING AND ALTERNATIVE

1 DISPUTE PROCEDURES. (a) The commission shall develop and
2 implement a policy, for the commission and each health and human
3 services agency, to encourage the use of:

4 (1) negotiated rulemaking procedures under Chapter
5 2008 for the adoption of commission rules; and

6 (2) appropriate alternative dispute resolution
7 procedures under Chapter 2009 to assist in the resolution of
8 internal and external disputes under the commission's or agency's
9 jurisdiction.

10 (b) The procedures relating to alternative dispute
11 resolution must conform, to the extent possible, to any model
12 guidelines issued by the State Office of Administrative Hearings
13 for the use of alternative dispute resolution by state agencies.

14 Sec. 531.0162. USE OF TECHNOLOGY. (a) The commission shall
15 develop and implement a policy requiring the agency commissioner
16 and employees of each health and human services agency to research
17 and propose appropriate technological solutions to improve the
18 agency's ability to perform its functions. The technological
19 solutions must:

20 (1) ensure that the public is able to easily find
21 information about a health and human services agency on the
22 Internet;

23 (2) ensure that persons who want to use a health and
24 human services agency's services are able to:

25 (A) interact with the agency through the
26 Internet; and

27 (B) access any service that can be provided

1 effectively through the Internet; and

2 (3) be cost-effective and developed through the
3 commission's planning process.

4 (b) The commission shall develop and implement a policy
5 described by Subsection (a) in relation to the commission's
6 functions.

7 Sec. 531.0163. MEMORANDUM OF UNDERSTANDING. (a) The
8 memorandum of understanding under Section 531.0055(k) must be
9 adopted by the commissioner by rule in accordance with the
10 procedures prescribed by Subchapter B, Chapter 2001, for adopting
11 rules, except that the requirements of Section 2001.033(a)(1)(A) or
12 (C) do not apply with respect to any part of the memorandum of
13 understanding that:

14 (1) concerns only internal management or organization
15 within or among health and human services agencies and does not
16 affect private rights or procedures; or

17 (2) relates solely to the internal personnel practices
18 of health and human services agencies.

19 (b) The memorandum of understanding may be amended only by
20 following the procedures prescribed under Subsection (a).

21 SECTION 1.07. Subchapter B, Chapter 531, Government Code, is
22 amended by adding Section 531.0224 to read as follows:

23 Sec. 531.0224. PLANNING AND POLICY DIRECTION OF TEMPORARY
24 ASSISTANCE FOR NEEDY FAMILIES PROGRAM. The commission shall:

25 (1) plan and direct the financial assistance program
26 under Chapter 31, Human Resources Code, including the procurement,
27 management, and monitoring of contracts necessary to implement the

1 program;

2 (2) adopt rules and standards governing the financial
3 assistance program under Chapter 31, Human Resources Code, in
4 consultation with the policy councils of the agencies that operate
5 the program, including rules for determining eligibility for and
6 the amount and duration of an earned income disregard; and

7 (3) establish requirements for and define the scope of
8 the ongoing evaluation of the financial assistance program under
9 Chapter 31, Human Resources Code.

10 SECTION 1.08. Chapter 531, Government Code, is amended by
11 adding Subchapters K, L, and M to read as follows:

12 SUBCHAPTER K. HEALTH AND HUMAN SERVICES COUNCIL

13 Sec. 531.401. DEFINITION. In this subchapter, "council"
14 means the Health and Human Services Council.

15 Sec. 531.402. HEALTH AND HUMAN SERVICES COUNCIL. (a) The
16 Health and Human Services Council is created to assist the
17 commissioner in developing rules and policies for the commission.

18 (b) The council is composed of nine members of the public
19 appointed by the governor with the advice and consent of the senate.
20 To be eligible for appointment to the council, a person must have
21 demonstrated an interest in and knowledge of problems and available
22 services related to the child health plan program, the financial
23 assistance program under Chapter 31, Human Resources Code, the
24 medical assistance program under Chapter 32, Human Resources Code,
25 or the nutritional assistance programs under Chapter 33, Human
26 Resources Code.

27 (c) The council shall study and make recommendations to the

1 commissioner regarding the management and operation of the
2 commission, including policies and rules governing the delivery of
3 services to persons who are served by the commission and the rights
4 and duties of persons who are served or regulated by the commission.

5 (d) Chapter 551 applies to the council.

6 (e) Chapter 2110 does not apply to the council.

7 (f) A majority of the members of the council constitute a
8 quorum for the transaction of business.

9 Sec. 531.403. APPOINTMENTS. (a) Appointments to the
10 council shall be made without regard to the race, color,
11 disability, sex, religion, age, or national origin of the
12 appointees.

13 (b) Appointments to the council shall be made so that each
14 geographic area of the state is represented on the council.
15 Notwithstanding Subsection (a), appointments to the council must
16 reflect the ethnic diversity of this state.

17 Sec. 531.404. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
18 person who is appointed as a member of the council may not vote,
19 deliberate, or be counted as a member in attendance at a meeting of
20 the council until the person completes a training program that
21 complies with this section.

22 (b) The training program must provide the person with
23 information regarding:

24 (1) the legislation that created the commission and
25 the council;

26 (2) the programs operated by the commission;

27 (3) the role and functions of the commission and the

1 council, including detailed information regarding the advisory
2 responsibilities of the council;

3 (4) the rules of the commissioner applicable to the
4 commission, with an emphasis on the rules that relate to
5 disciplinary and investigatory authority;

6 (5) the current budget for the commission;

7 (6) the results of the most recent formal audit of the
8 commission;

9 (7) the requirements of:

10 (A) the open meetings law, Chapter 551;

11 (B) the public information law, Chapter 552;

12 (C) the administrative procedure law, Chapter
13 2001; and

14 (D) other laws relating to public officials,
15 including conflict-of-interest laws; and

16 (8) any applicable ethics policies adopted by the
17 commissioner or the Texas Ethics Commission.

18 Sec. 531.405. TERMS. (a) Council members serve for
19 staggered six-year terms with the terms of three members expiring
20 February 1 of each odd-numbered year.

21 (b) A member of the council may not serve more than two
22 consecutive full terms as a council member.

23 Sec. 531.406. VACANCY. The governor by appointment shall
24 fill the unexpired term of a vacancy on the council.

25 Sec. 531.407. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.

26 (a) The governor shall designate a member of the council as the
27 presiding officer to serve in that capacity at the pleasure of the

1 governor.

2 (b) The members of the council shall elect any other
3 necessary officers.

4 (c) The council shall meet quarterly and at other times at
5 the call of the presiding officer. The council may hold meetings in
6 different areas of the state.

7 Sec. 531.408. REIMBURSEMENT FOR EXPENSES. A council member
8 may not receive compensation for service as a member of the council
9 but is entitled to reimbursement for travel expenses incurred by
10 the member while conducting the business of the council as provided
11 by the General Appropriations Act.

12 Sec. 531.409. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

13 (a) The commissioner, with the advice of the council, shall prepare
14 information of public interest describing the functions of the
15 commission and the procedures by which complaints are filed with
16 and resolved by the commission. The commission shall make the
17 information available to the public and appropriate state
18 governmental entities.

19 (b) The commissioner by rule shall establish methods by
20 which consumers and service recipients are notified of the name,
21 mailing address, and telephone number of the commission for
22 directing complaints to the commission.

23 Sec. 531.410. PUBLIC ACCESS AND TESTIMONY. The
24 commissioner shall develop and implement policies that provide the
25 public with a reasonable opportunity to appear before the council
26 or commissioner and to speak on any issue under the jurisdiction of
27 the commission.

1 Sec. 531.411. POLICYMAKING AND MANAGEMENT
2 RESPONSIBILITIES. The commissioner, with the advice of the
3 council, shall develop and the commission shall implement policies
4 that clearly delineate the policymaking responsibilities of the
5 commissioner from the management responsibilities of the
6 commission and the staff of the commission.

7 [Sections 531.412-531.420 reserved for expansion]

8 SUBCHAPTER L. COUNCIL FOR THE BLIND, DEAF, AND HARD OF HEARING

9 Sec. 531.421. DEFINITION. In this subchapter, "council"
10 means the Council for the Blind, Deaf, and Hard of Hearing.

11 Sec. 531.422. COUNCIL FOR THE BLIND, DEAF, AND HARD OF
12 HEARING. (a) The Council for the Blind, Deaf, and Hard of Hearing
13 is created to advise the commissioner and the offices for the blind
14 and for the deaf and hard of hearing regarding programs and services
15 for those populations.

16 (b) The council is composed of nine members of the public
17 appointed by the governor. To be eligible for appointment to the
18 council, a person must have demonstrated an interest in and
19 knowledge of problems and available services for persons who are
20 blind, deaf, or hard of hearing.

21 (c) Chapter 551 applies to the council.

22 (d) Chapter 2110 does not apply to the council.

23 Sec. 531.423. APPOINTMENTS. (a) Appointments to the
24 council shall be made without regard to the race, color,
25 disability, sex, religion, age, or national origin of the
26 appointees.

27 (b) Appointments to the council shall be made so that each

1 geographic area of the state is represented on the council.

2 Sec. 531.424. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
3 person who is appointed as a member of the council may not vote,
4 deliberate, or be counted as a member in attendance at a meeting of
5 the council until the person completes a training program that
6 complies with this section.

7 (b) The training program must provide the person with
8 information regarding:

9 (1) the legislation that created the commission and
10 the council;

11 (2) the programs operated by the commission;

12 (3) the role and functions of the commission and the
13 council, including detailed information regarding the advisory
14 responsibilities of the council;

15 (4) the rules of the commissioner applicable to the
16 commission, with an emphasis on the rules that relate to
17 disciplinary and investigatory authority;

18 (5) the current budget for the commission;

19 (6) the results of the most recent formal audit of the
20 commission;

21 (7) the requirements of:

22 (A) the open meetings law, Chapter 551;

23 (B) the public information law, Chapter 552;

24 (C) the administrative procedure law, Chapter
25 2001; and

26 (D) other laws relating to public officials,
27 including conflict-of-interest laws; and

1 (8) any applicable ethics policies adopted by the
2 commissioner or the Texas Ethics Commission.

3 Sec. 531.425. TERMS. (a) Council members serve for
4 staggered six-year terms with the terms of three members expiring
5 February 1 of each odd-numbered year.

6 (b) A member of the council may not serve more than two
7 consecutive full terms as a council member.

8 Sec. 531.426. VACANCY. The governor by appointment shall
9 fill the unexpired term of a vacancy on the council.

10 Sec. 531.427. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.

11 (a) The governor shall designate a member of the council as the
12 presiding officer to serve in that capacity at the pleasure of the
13 governor.

14 (b) The members of the council shall elect any other
15 necessary officers.

16 (c) The council shall meet quarterly and at other times at
17 the call of the presiding officer. The council may hold meetings in
18 different areas of the state.

19 Sec. 531.428. REIMBURSEMENT FOR EXPENSES. A council member
20 may not receive compensation for service as a member of the council
21 but is entitled to reimbursement for travel expenses incurred by
22 the member while conducting the business of the council as provided
23 by the General Appropriations Act.

24 Sec. 531.429. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

25 (a) The commissioner, with the advice of the council, shall prepare
26 information of public interest describing the functions of the
27 commission and the procedures by which complaints are filed with

1 and resolved by the commission. The commission shall make the
2 information available to the public and appropriate state
3 governmental entities.

4 (b) The commissioner by rule shall establish methods by
5 which consumers and service recipients are notified of the name,
6 mailing address, and telephone number of the commission for
7 directing complaints to the commission.

8 Sec. 531.430. PUBLIC ACCESS AND TESTIMONY. The
9 commissioner shall develop and implement policies that provide the
10 public with a reasonable opportunity to appear before the council
11 or commissioner and to speak on any issue under the jurisdiction of
12 the commission.

13 Sec. 531.431. POLICYMAKING AND MANAGEMENT
14 RESPONSIBILITIES. The commissioner, with the advice of the
15 council, shall develop and the commission shall implement policies
16 that clearly delineate the policymaking responsibilities of the
17 commissioner from the management responsibilities of the
18 commission and the staff of the commission.

19 [Sections 531.432-531.440 reserved for expansion]

20 SUBCHAPTER M. REHABILITATION COUNCIL

21 Sec. 531.441. DEFINITION. In this subchapter, "council"
22 means the Rehabilitation Council.

23 Sec. 531.442. REHABILITATION COUNCIL. (a) The
24 Rehabilitation Council is created to advise the commissioner and
25 the office of rehabilitation services regarding programs and
26 services for persons with disabilities other than developmental
27 delay and mental retardation.

1 (b) The council is composed of nine members of the public
2 appointed by the governor. To be eligible for appointment to the
3 council, a person must have demonstrated an interest in and
4 knowledge of problems and available services related to the child
5 health plan program, the financial assistance program under Chapter
6 31, Human Resources Code, the medical assistance program under
7 Chapter 32, Human Resources Code, or the nutritional assistance
8 programs under Chapter 33, Human Resources Code.

9 (c) Chapter 551 applies to the council.

10 (d) Chapter 2110 does not apply to the council.

11 Sec. 531.443. APPOINTMENTS. (a) Appointments to the
12 council shall be made without regard to the race, color,
13 disability, sex, religion, age, or national origin of the
14 appointees.

15 (b) Appointments to the council shall be made so that each
16 geographic area of the state is represented on the council.

17 Sec. 531.444. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
18 person who is appointed as a member of the council may not vote,
19 deliberate, or be counted as a member in attendance at a meeting of
20 the council until the person completes a training program that
21 complies with this section.

22 (b) The training program must provide the person with
23 information regarding:

24 (1) the legislation that created the commission and
25 the council;

26 (2) the programs operated by the commission;

27 (3) the role and functions of the commission and the

1 council, including detailed information regarding the advisory
2 responsibilities of the council;

3 (4) the rules of the commissioner applicable to the
4 commission, with an emphasis on the rules that relate to
5 disciplinary and investigatory authority;

6 (5) the current budget for the commission;

7 (6) the results of the most recent formal audit of the
8 commission;

9 (7) the requirements of:

10 (A) the open meetings law, Chapter 551;

11 (B) the public information law, Chapter 552;

12 (C) the administrative procedure law, Chapter
13 2001; and

14 (D) other laws relating to public officials,
15 including conflict-of-interest laws; and

16 (8) any applicable ethics policies adopted by the
17 commissioner or the Texas Ethics Commission.

18 Sec. 531.445. TERMS. (a) Council members serve for
19 staggered six-year terms with the terms of three members expiring
20 February 1 of each odd-numbered year.

21 (b) A member of the council may not serve more than two
22 consecutive full terms as a council member.

23 Sec. 531.446. VACANCY. The governor by appointment shall
24 fill the unexpired term of a vacancy on the council.

25 Sec. 531.447. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.

26 (a) The governor shall designate a member of the council as the
27 presiding officer to serve in that capacity at the pleasure of the

1 governor.

2 (b) The members of the council shall elect any other
3 necessary officers.

4 (c) The council shall meet quarterly and at other times at
5 the call of the presiding officer. The council may hold meetings in
6 different areas of the state.

7 Sec. 531.448. REIMBURSEMENT FOR EXPENSES. A council member
8 may not receive compensation for service as a member of the council
9 but is entitled to reimbursement for travel expenses incurred by
10 the member while conducting the business of the council as provided
11 by the General Appropriations Act.

12 Sec. 531.449. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

13 (a) The commissioner, with the advice of the council, shall prepare
14 information of public interest describing the functions of the
15 commission and the procedures by which complaints are filed with
16 and resolved by the commission. The commission shall make the
17 information available to the public and appropriate state
18 governmental entities.

19 (b) The commissioner by rule shall establish methods by
20 which consumers and service recipients are notified of the name,
21 mailing address, and telephone number of the commission for
22 directing complaints to the commission.

23 Sec. 531.450. PUBLIC ACCESS AND TESTIMONY. The
24 commissioner shall develop and implement policies that provide the
25 public with a reasonable opportunity to appear before the council
26 or commissioner and to speak on any issue under the jurisdiction of
27 the commission.

1 Sec. 531.451. POLICYMAKING AND MANAGEMENT
2 RESPONSIBILITIES. The commissioner, with the advice of the
3 council, shall develop and the commission shall implement policies
4 that clearly delineate the policymaking responsibilities of the
5 commissioner from the management responsibilities of the
6 commission and the staff of the commission.

7 SECTION 1.09. The Health and Safety Code is amended by
8 adding Title 12 to read as follows:

9 TITLE 12. HEALTH AND MENTAL HEALTH

10 CHAPTER 1001. DEPARTMENT OF HEALTH SERVICES

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 1001.001. DEFINITIONS. In this chapter:

13 (1) "Commission" means the Health and Human Services
14 Commission.

15 (2) "Commissioner" means the commissioner of health
16 services.

17 (3) "Council" means the Health Services Council.

18 (4) "Department" means the Department of Health
19 Services.

20 Sec. 1001.002. AGENCY. The department is an agency of the
21 state.

22 Sec. 1001.003. SUNSET PROVISION. The department is subject
23 to Chapter 325, Government Code (Texas Sunset Act). Unless
24 continued in existence as provided by that chapter, the department
25 is abolished and this chapter expires September 1, 2009.

26 [Sections 1001.004-1001.020 reserved for expansion]

27 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

1 Sec. 1001.021. HEALTH SERVICES COUNCIL. (a) The Health
2 Services Council is created to assist the commissioner of health
3 and human services in developing rules and policies for the
4 department.

5 (b) The council is composed of nine members of the public
6 appointed by the governor with the advice and consent of the senate.
7 To be eligible for appointment to the council, a person must have
8 demonstrated an interest in and knowledge of problems and available
9 services related to public health, mental health, substance abuse,
10 or early childhood intervention services.

11 (c) The council shall study and make recommendations to the
12 commissioner of health and human services regarding the management
13 and operation of the department, including policies and rules
14 governing the delivery of services to persons who are served by the
15 department and the rights and duties of persons who are served or
16 regulated by the department.

17 (d) Chapter 551, Government Code, applies to the council.

18 (e) Chapter 2110, Government Code, does not apply to the
19 council.

20 (f) A majority of the members of the council constitute a
21 quorum for the transaction of business.

22 Sec. 1001.022. APPOINTMENTS. (a) Appointments to the
23 council shall be made without regard to the race, color,
24 disability, sex, religion, age, or national origin of the
25 appointees.

26 (b) Appointments to the council shall be made so that each
27 geographic area of the state is represented on the council.

1 Notwithstanding Subsection (a), appointments to the council must
2 reflect the ethnic diversity of this state.

3 Sec. 1001.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
4 person who is appointed as a member of the council may not vote,
5 deliberate, or be counted as a member in attendance at a meeting of
6 the council until the person completes a training program that
7 complies with this section.

8 (b) The training program must provide the person with
9 information regarding:

10 (1) the legislation that created the department and
11 the council;

12 (2) the programs operated by the department;

13 (3) the role and functions of the department and the
14 council, including detailed information regarding:

15 (A) the division of authority and of
16 responsibility between the commissioner and the commissioner of
17 health and human services; and

18 (B) the advisory responsibilities of the
19 council;

20 (4) the rules of the commissioner of health and human
21 services applicable to the department, with an emphasis on the
22 rules that relate to disciplinary and investigatory authority;

23 (5) the current budget for the department;

24 (6) the results of the most recent formal audit of the
25 department;

26 (7) the requirements of:

27 (A) the open meetings law, Chapter 551,

1 Government Code;

2 (B) the public information law, Chapter 552,

3 Government Code;

4 (C) the administrative procedure law, Chapter
5 2001, Government Code; and

6 (D) other laws relating to public officials,
7 including conflict-of-interest laws; and

8 (8) any applicable ethics policies adopted by the
9 commissioner of health and human services or the Texas Ethics
10 Commission.

11 Sec. 1001.024. TERMS. (a) Council members serve for
12 staggered six-year terms with the terms of three members expiring
13 February 1 of each odd-numbered year.

14 (b) A member of the council may not serve more than two
15 consecutive full terms as a council member.

16 Sec. 1001.025. VACANCY. The governor by appointment shall
17 fill the unexpired term of a vacancy on the council.

18 Sec. 1001.026. PRESIDING OFFICER; OTHER OFFICERS;
19 MEETINGS. (a) The governor shall designate a member of the council
20 as the presiding officer to serve in that capacity at the pleasure
21 of the governor.

22 (b) The members of the council shall elect any other
23 necessary officers.

24 (c) The council shall meet quarterly and at other times at
25 the call of the presiding officer. The council may hold meetings in
26 different areas of the state.

27 Sec. 1001.027. REIMBURSEMENT FOR EXPENSES. A council

1 member may not receive compensation for service as a member of the
2 council but is entitled to reimbursement for travel expenses
3 incurred by the member while conducting the business of the council
4 as provided by the General Appropriations Act.

5 Sec. 1001.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

6 (a) The commissioner of health and human services, with the advice
7 of the council, shall prepare information of public interest
8 describing the functions of the department and the procedures by
9 which complaints are filed with and resolved by the department. The
10 commission shall make the information available to the public and
11 appropriate state governmental entities.

12 (b) The commissioner of health and human services by rule
13 shall establish methods by which consumers and service recipients
14 are notified of the name, mailing address, and telephone number of
15 the department for directing complaints to the department.

16 Sec. 1001.029. PUBLIC ACCESS AND TESTIMONY. (a) The
17 commissioner of health and human services shall develop and
18 implement policies that provide the public with a reasonable
19 opportunity to appear before the commission or the commissioner of
20 health and human services and to speak on any issue under the
21 jurisdiction of the department.

22 (b) The commissioner of health and human services shall
23 grant an opportunity for a public hearing before the council makes
24 recommendations to the commissioner of health and human services
25 regarding a substantive rule if a public hearing is requested by:

26 (1) at least 25 persons;

27 (2) a governmental entity; or

1 demonstrated ability.

2 (b) The commissioner serves for a term of one year.

3 (c) Subject to the control of the commissioner of health and
4 human services, the commissioner shall act as the department's
5 chief administrative officer and as a liaison between the
6 department and commission.

7 (d) The commissioner shall administer this chapter under
8 operational policies established by the commissioner of health and
9 human services and in accordance with the memorandum of
10 understanding under Section 531.0055(k), Government Code, between
11 the commissioner and the commissioner of health and human services,
12 as adopted by rule.

13 Sec. 1001.052. PERSONNEL. (a) The department may employ,
14 compensate, and prescribe the duties of personnel necessary and
15 suitable to administer this chapter.

16 (b) The commissioner of health and human services shall
17 prepare and by rule adopt personnel standards.

18 (c) A personnel position may be filled only by an individual
19 selected and appointed on a nonpartisan merit basis.

20 (d) The commissioner of health and human services, with the
21 advice of the council, shall develop and the department shall
22 implement policies that clearly define the responsibilities of the
23 staff of the department.

24 Sec. 1001.053. INFORMATION ABOUT QUALIFICATIONS AND
25 STANDARDS OF CONDUCT. The commissioner or the commissioner's
26 designee shall provide to department employees, as often as
27 necessary, information regarding the requirements for employment

1 under this chapter or rules adopted by the commissioner of health
2 and human services, including information regarding a person's
3 responsibilities under applicable laws relating to standards of
4 conduct for state employees.

5 Sec. 1001.054. MERIT PAY. Subject to rules adopted by the
6 commissioner of health and human services, the commissioner or the
7 commissioner's designee shall develop a system of annual
8 performance evaluations. All merit pay for department employees
9 must be given under the system established under this section or
10 under rules adopted by the commissioner of health and human
11 services.

12 Sec. 1001.055. CAREER LADDER. The commissioner or the
13 commissioner's designee shall develop an intra-agency career
14 ladder program. The program must require intra-agency postings of
15 all nonentry-level positions concurrently with any public posting.

16 Sec. 1001.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
17 Subject to rules adopted by the commissioner of health and human
18 services, the commissioner or the commissioner's designee shall
19 prepare and maintain a written policy statement that implements a
20 program of equal employment opportunity to ensure that all
21 personnel decisions are made without regard to race, color,
22 disability, sex, religion, age, or national origin.

23 (b) Unless the following are included in a policy statement
24 adopted by the commissioner of health and human services that is
25 applicable to the department, the policy statement must include:

26 (1) personnel policies, including policies relating
27 to recruitment, evaluation, selection, training, and promotion of

1 personnel, that show the intent of the department to avoid the
2 unlawful employment practices described by Chapter 21, Labor Code;
3 and

4 (2) an analysis of the extent to which the composition
5 of the department's personnel is in accordance with state and
6 federal law and a description of reasonable methods to achieve
7 compliance with state and federal law.

8 (c) The policy statement must be:

9 (1) updated annually;

10 (2) reviewed by the state Commission on Human Rights
11 for compliance with Subsection (b)(1); and

12 (3) filed with the governor's office.

13 Sec. 1001.057. STATE EMPLOYEE INCENTIVE PROGRAM. The
14 commissioner or the commissioner's designee shall provide to
15 department employees information and training on the benefits and
16 methods of participation in the state employee incentive program.

17 [Sections 1001.058-1001.070 reserved for expansion]

18 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

19 Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT
20 RELATED TO HEALTH CARE. The department is responsible for
21 administering human services programs regarding the public health,
22 including:

23 (1) implementing the state's public health care
24 delivery programs under the authority of the department;

25 (2) administering state health facilities, hospitals,
26 and health care systems;

27 (3) developing and providing health care services, as

1 directed by law;

2 (4) providing for the prevention and control of
3 communicable diseases;

4 (5) providing public education on health-related
5 matters, as directed by law;

6 (6) compiling and reporting health-related
7 information, as directed by law;

8 (7) acting as the lead agency for implementation of
9 state policies regarding the human immunodeficiency virus and
10 acquired immunodeficiency syndrome and administering programs
11 related to the human immunodeficiency virus and acquired
12 immunodeficiency syndrome;

13 (8) investigating the causes of injuries and methods
14 of prevention;

15 (9) administering a grant program to provide
16 appropriated money to counties, municipalities, public health
17 districts, and other political subdivisions for their use to
18 provide or pay for essential public health services;

19 (10) administering the registration of vital
20 statistics;

21 (11) licensing, inspecting, and enforcing regulations
22 regarding health facilities, other than long-term care facilities
23 regulated by the Department of Supportive Services;

24 (12) implementing established standards and
25 procedures for the management and control of sanitation and for
26 health protection measures;

27 (13) enforcing regulations regarding radioactive

1 materials;

2 (14) enforcing regulations regarding food, bottled
3 and vended drinking water, drugs, cosmetics, and health devices;

4 (15) enforcing regulations regarding food service
5 establishments, retail food stores, mobile food units, and roadside
6 food vendors; and

7 (16) enforcing regulations controlling hazardous
8 substances in households and workplaces.

9 Sec. 1001.072. GENERAL POWERS AND DUTIES OF DEPARTMENT
10 RELATED TO MENTAL HEALTH. The department is responsible for
11 administering human services programs regarding mental health,
12 including:

13 (1) administering and coordinating mental health
14 services at the local and state level;

15 (2) operating the state's mental health facilities;
16 and

17 (3) inspecting, licensing, and enforcing regulations
18 regarding mental health facilities, other than long-term care
19 facilities regulated by the Department of Supportive Services.

20 Sec. 1001.073. GENERAL POWERS AND DUTIES OF DEPARTMENT
21 RELATED TO SUBSTANCE ABUSE. The department is responsible for
22 administering human services programs regarding substance abuse,
23 including:

24 (1) administering and coordinating substance abuse
25 prevention and treatment programs at the state and local level;

26 (2) inspecting, licensing, and enforcing regulations
27 regarding substance abuse treatment facilities; and

1 (3) providing public education on substance abuse
2 issues, as directed by law.

3 Sec. 1001.074. INFORMATION REGARDING COMPLAINTS. (a) The
4 department shall maintain a file on each written complaint filed
5 with the department. The file must include:

6 (1) the name of the person who filed the complaint;

7 (2) the date the complaint is received by the
8 department;

9 (3) the subject matter of the complaint;

10 (4) the name of each person contacted in relation to
11 the complaint;

12 (5) a summary of the results of the review or
13 investigation of the complaint; and

14 (6) an explanation of the reason the file was closed,
15 if the department closed the file without taking action other than
16 to investigate the complaint.

17 (b) The department shall provide to the person filing the
18 complaint and to each person who is a subject of the complaint a
19 copy of the commissioner of health and human services' and the
20 department's policies and procedures relating to complaint
21 investigation and resolution.

22 (c) The department, at least quarterly until final
23 disposition of the complaint, shall notify the person filing the
24 complaint and each person who is a subject of the complaint of the
25 status of the investigation unless the notice would jeopardize an
26 undercover investigation.

27 Sec. 1001.075. RULES. The commissioner of health and human

1 services may adopt rules reasonably necessary for the department to
2 administer this chapter, consistent with the memorandum of
3 understanding under Section 531.0055(k), Government Code, between
4 the commissioner and the commissioner of health and human services,
5 as adopted by rule.

6 SECTION 1.10. Section 40.001, Human Resources Code, is
7 amended by adding Subdivision (2-a) and amending Subdivision (4) to
8 read as follows:

9 (2-a) "Council" means the Protective Services
10 Council.

11 (4) "Commissioner" [~~"Executive director"~~] means the
12 commissioner [~~executive director~~] of the Department of Protective
13 [~~and Regulatory~~] Services.

14 SECTION 1.11. Section 40.002, Human Resources Code, is
15 amended to read as follows:

16 Sec. 40.002. DEPARTMENT OF PROTECTIVE [~~AND REGULATORY~~]
17 SERVICES; GENERAL DUTIES OF DEPARTMENT [~~RESPONSIBILITY~~]. (a) The
18 Department of Protective [~~and Regulatory~~] Services is composed of
19 the council [~~board~~], the commissioner [~~executive director~~], an
20 administrative staff, and other officers and employees necessary to
21 efficiently carry out the purposes of this chapter.

22 (b) Notwithstanding any other law, the [~~The~~] department
23 shall [~~is the state agency with primary responsibility for~~]:

24 (1) provide [~~providing~~] protective services for
25 children and elderly and disabled persons, including
26 investigations of alleged abuse, neglect, or exploitation in
27 facilities of the Texas Department of Mental Health and Mental

1 Retardation or its successor agency;

2 (2) provide [~~providing~~] family support and family
3 preservation services that [~~which~~] respect the fundamental right of
4 parents to control the education and upbringing of their children;

5 (3) license, register, and enforce regulations
6 applicable to [~~regulating~~] child-care facilities and child-care
7 administrators; [~~and~~]

8 (4) implement [~~implementing~~] and manage [~~managing~~]
9 programs intended to provide early intervention or prevent at-risk
10 behaviors that lead to child abuse, delinquency, running away,
11 truancy, and dropping out of school; and

12 (5) investigate allegations of abuse or neglect of
13 persons residing in long-term care facilities.

14 (c) The department is the state agency designated to
15 cooperate with the federal government in the administration of
16 programs under:

17 (1) Parts B and E, Title IV, federal Social Security
18 Act (42 U.S.C. Sections 620 et seq. and 670 et seq.); and

19 (2) other federal law for which the department has
20 administrative responsibility.

21 (d) The department shall cooperate with the United States
22 Department of Health and Human Services and other federal and state
23 agencies in a reasonable manner and in conformity with the
24 provisions of federal law and this subtitle to the extent necessary
25 to qualify for federal assistance in the delivery of services.

26 (e) If the department determines that a provision of state
27 law governing the department conflicts with a provision of federal

1 law, the commissioner [~~department~~] may adopt policies and rules
2 necessary to allow the state to receive and spend federal matching
3 funds to the fullest extent possible in accordance with the federal
4 statutes, this subtitle, and the state constitution and within the
5 limits of appropriated funds.

6 SECTION 1.12. Sections 40.004, 40.021, 40.022, 40.0226,
7 40.024, 40.025, 40.026, and 40.027, Human Resources Code, are
8 amended to read as follows:

9 Sec. 40.004. PUBLIC INTEREST INFORMATION AND PUBLIC ACCESS.

10 (a) The commissioner [~~board~~] shall develop and implement policies
11 that provide the public with a reasonable opportunity to appear
12 before the commission or commissioner [~~board~~] and to speak on any
13 issue under the jurisdiction of the department.

14 (b) The commissioner, with the advice of the council,
15 [~~department~~] shall prepare information of public interest
16 describing the functions of the department. The commission
17 [~~department~~] shall make the information available to the public and
18 appropriate state agencies.

19 (c) The commissioner shall grant an opportunity for a public
20 hearing before the council makes recommendations to the
21 commissioner regarding a substantive rule if a public hearing is
22 requested by:

- 23 (1) at least 25 persons;
24 (2) a governmental entity; or
25 (3) an association with at least 25 members.

26 (d) The commissioner shall consider fully all written and
27 oral submissions about a proposed rule.

1 Sec. 40.021. [~~BOARD OF~~] PROTECTIVE [~~AND REGULATORY~~]
2 SERVICES COUNCIL. (a) The Protective Services Council is created
3 to assist the commissioner in developing rules and policies for the
4 department [~~board is composed of six members appointed by the~~
5 ~~governor with the advice and consent of the senate. The governor~~
6 ~~shall designate one member to be the presiding officer of the board~~
7 ~~to serve in that capacity at the pleasure of the governor].~~

8 (b) The council is composed of nine members of the public
9 appointed by the governor with the advice and consent of the senate.
10 To be eligible for appointment to the council, a person must have
11 demonstrated an interest in and knowledge of problems and available
12 services related to the functions of the department. [~~Four members~~
13 ~~of the board must have a demonstrated interest in the services~~
14 ~~provided by the department, and two members must represent the~~
15 ~~public.]~~

16 (c) The council shall study and make recommendations to the
17 commissioner regarding the management and operation of the
18 department, including policies and rules governing the delivery of
19 services to persons who are served by the department and the rights
20 and duties of persons who are served or regulated by the department.

21 (d) Chapter 551, Government Code, applies to the council.

22 (e) Chapter 2110, Government Code, does not apply to the
23 council [~~board shall be appointed without regard to race, color,~~
24 ~~disability, sex, religion, age, or national origin].~~

25 (f) A majority of the members of the council constitute a
26 quorum for the transaction of business.

27 Sec. 40.022. APPOINTMENTS [~~RESTRICTIONS ON BOARD~~

1 ~~APPOINTMENT OR MEMBERSHIP~~]. (a) Appointments to the council shall
2 be made without regard to the race, color, disability, sex,
3 religion, age, or national origin of the appointees. [~~A person is~~
4 ~~not eligible for appointment as a member of the board if the person~~
5 ~~or the person's spouse:~~

6 [~~(1) is a person who is employed by or participates in~~
7 ~~the management of a business entity or other organization regulated~~
8 ~~by the department or receiving funds from the department;~~

9 [~~(2) owns or controls, directly or indirectly, more~~
10 ~~than a 10 percent interest in a business entity or other~~
11 ~~organization that is regulated by the department or that receives~~
12 ~~funds from the department;~~

13 [~~(3) uses or receives a substantial amount of tangible~~
14 ~~goods, services, or money from the department, other than~~
15 ~~compensation or reimbursement authorized by law for board~~
16 ~~membership, attendance, or expenses, or as a client or a parent or~~
17 ~~guardian of a client receiving services from the department; or~~

18 [~~(4) is an employee, officer, or paid consultant of a~~
19 ~~trade association in a field under the jurisdiction of the~~
20 ~~department.]~~

21 (b) Appointments to the council shall be made so that each
22 geographic area of the state is represented on the council.
23 Notwithstanding Subsection (a), appointments to the council must
24 reflect the ethnic diversity of this state. [~~In addition to the~~
25 ~~requirements of Subsection (a), a person is not eligible for~~
26 ~~appointment as a public member of the board if the person or the~~
27 ~~person's spouse is registered, certified, or licensed by an~~

1 ~~occupational regulatory agency in a field under the jurisdiction of~~
2 ~~the department.]~~

3 Sec. 40.0226. [~~BOARD MEMBER~~] TRAINING PROGRAM FOR COUNCIL
4 MEMBERS. (a) A person who is appointed as a member of the council
5 may not vote, deliberate, or be counted as a member in attendance at
6 a meeting of the council until the person completes a training
7 program that complies with [~~Before a member of the board may assume~~
8 ~~the member's duties and before the member may be confirmed by the~~
9 ~~senate, the member must complete at least one course of the training~~
10 ~~program established under]~~ this section.

11 (b) The [A] training program must [~~established under this~~
12 ~~section shall]~~ provide information to the member regarding:

13 (1) the [~~enabling~~] legislation that created the
14 department and the council [~~board~~];

15 (2) the programs operated by the department;

16 (3) the role and functions of the department and the
17 council, including detailed information regarding:

18 (A) the division of authority and of
19 responsibility between the commissioner and the commissioner of
20 health and human services; and

21 (B) the advisory responsibilities of the
22 council;

23 (4) the rules of the commissioner applicable to the
24 department, with an emphasis on the rules that relate to
25 disciplinary and investigatory authority;

26 (5) the current budget for the department;

27 (6) the results of the most recent formal audit of the

1 department;

2 (7) the requirements of the:

3 (A) open meetings law, Chapter 551, Government
4 Code;

5 (B) public information [~~open records~~] law,
6 Chapter 552, Government Code; and

7 (C) administrative procedure law, Chapter 2001,
8 Government Code;

9 (8) the requirements of the conflict-of-interest laws
10 and other laws relating to public officials; and

11 (9) any applicable ethics policies adopted by the
12 commissioner [~~board~~] or the Texas Ethics Commission.

13 Sec. 40.024. [~~BOARD~~] TERMS; VACANCY. (a) Members of the
14 council [~~board~~] serve for staggered six-year terms, with the terms
15 of three [~~two~~] members expiring February 1 of each odd-numbered
16 year.

17 (b) A member of the council may not serve more than two
18 consecutive full terms as a council member.

19 (c) The governor by appointment shall fill the unexpired
20 term of a vacancy on the council.

21 Sec. 40.025. REIMBURSEMENT FOR EXPENSES [~~BOARD PER DIEM~~].
22 A council member may not receive compensation for service as a
23 member of the council but is entitled to reimbursement for travel
24 expenses incurred by the member while conducting the business of
25 the council as provided [~~While performing their duties, board~~
26 ~~members are entitled to a per diem as prescribed~~] by the General
27 Appropriations Act.

1 Sec. 40.026. PRESIDING OFFICER; OTHER OFFICERS; [BOARD]
2 MEETINGS[~~, QUORUM~~]. (a) The governor shall designate a member of
3 the council as the presiding officer to serve in that capacity at
4 the pleasure of the governor [~~board shall meet at least quarterly~~
5 ~~and at the call of the presiding officer~~].

6 (b) The members of the council shall elect any other
7 necessary officers [~~Four members of the board constitute a quorum~~].

8 (c) The council shall meet quarterly and at other times at
9 the call of the presiding officer. The council may hold meetings in
10 different areas of the state.

11 Sec. 40.027. COMMISSIONER [EXECUTIVE DIRECTOR]. (a) The
12 governor [~~commissioner of health and human services~~] shall appoint
13 a commissioner, who is to be selected according to education,
14 training, experience, and demonstrated ability [~~employ the~~
15 ~~executive director in accordance with Section 531.0056, Government~~
16 ~~Code~~].

17 (b) The commissioner serves for a term of one year.

18 (c) Subject to the control of the commissioner of health and
19 human services, the commissioner shall act as the department's
20 chief administrative officer and as a liaison between the
21 department and commission.

22 (d) The commissioner shall administer this chapter and
23 other laws relating to the department under operational policies
24 established [~~executive director is the executive head of the~~
25 ~~department. The executive director shall perform the duties~~
26 ~~assigned~~] by the commissioner and in accordance with the memorandum
27 of understanding under Section 531.0055(k), Government Code,

1 between the commissioner and the commissioner of health and human
2 services, as adopted by rule [of health and human services and state
3 law].

4 SECTION 1.13. The Human Resources Code is amended by adding
5 Title 11 to read as follows:

6 TITLE 11. COMMUNITY-BASED AND LONG-TERM CARE SERVICES

7 CHAPTER 161. DEPARTMENT OF SUPPORTIVE SERVICES

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 161.001. DEFINITIONS. In this chapter:

10 (1) "Commission" means the Health and Human Services
11 Commission.

12 (2) "Commissioner" means the commissioner of
13 supportive services.

14 (3) "Council" means the Supportive Services Council.

15 (4) "Department" means the Department of Supportive
16 Services.

17 Sec. 161.002. AGENCY. The department is an agency of the
18 state.

19 Sec. 161.003. SUNSET PROVISION. The department is subject
20 to Chapter 325, Government Code (Texas Sunset Act). Unless
21 continued in existence as provided by that chapter, the department
22 is abolished and this chapter expires September 1, 2009.

23 [Sections 161.004-161.020 reserved for expansion]

24 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

25 Sec. 161.021. SUPPORTIVE SERVICES COUNCIL. (a) The
26 Supportive Services Council is created to assist the commissioner
27 of health and human services in developing rules and policies for

1 the department.

2 (b) The council is composed of nine members of the public
3 appointed by the governor with the advice and consent of the senate.
4 To be eligible for appointment to the council, a person must have
5 demonstrated an interest in and knowledge of problems and available
6 services related to the aging and persons with developmental
7 disabilities or mental retardation.

8 (c) The council shall study and make recommendations to the
9 commissioner of health and human services regarding the management
10 and operation of the department, including policies and rules
11 governing the delivery of services to persons who are served by the
12 department and the rights and duties of persons who are served or
13 regulated by the department.

14 (d) Chapter 551, Government Code, applies to the council.

15 (e) Chapter 2110, Government Code, does not apply to the
16 council.

17 (f) A majority of the members of the council constitute a
18 quorum for the transaction of business.

19 Sec. 161.022. APPOINTMENTS. (a) Appointments to the
20 council shall be made without regard to the race, color,
21 disability, sex, religion, age, or national origin of the
22 appointees.

23 (b) Appointments to the council shall be made so that each
24 geographic area of the state is represented on the council.
25 Notwithstanding Subsection (a), appointments to the council must
26 reflect the ethnic diversity of this state.

27 Sec. 161.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A

1 person who is appointed as a member of the council may not vote,
2 deliberate, or be counted as a member in attendance at a meeting of
3 the council until the person completes a training program that
4 complies with this section.

5 (b) The training program must provide the person with
6 information regarding:

7 (1) the legislation that created the department and
8 the council;

9 (2) the programs operated by the department;

10 (3) the role and functions of the department and the
11 council, including detailed information regarding:

12 (A) the division of authority and of
13 responsibility between the commissioner and the commissioner of
14 health and human services; and

15 (B) the advisory responsibilities of the
16 council;

17 (4) the rules of the commissioner of health and human
18 services applicable to the department, with an emphasis on the
19 rules that relate to disciplinary and investigatory authority;

20 (5) the current budget for the department;

21 (6) the results of the most recent formal audit of the
22 department;

23 (7) the requirements of:

24 (A) the open meetings law, Chapter 551,
25 Government Code;

26 (B) the public information law, Chapter 552,
27 Government Code;

1 (C) the administrative procedure law, Chapter
2 2001, Government Code; and

3 (D) other laws relating to public officials,
4 including conflict-of-interest laws; and

5 (8) any applicable ethics policies adopted by the
6 commissioner of health and human services or the Texas Ethics
7 Commission.

8 Sec. 161.024. TERMS. (a) Council members serve for
9 staggered six-year terms with the terms of three members expiring
10 February 1 of each odd-numbered year.

11 (b) A member of the council may not serve more than two
12 consecutive full terms as a council member.

13 Sec. 161.025. VACANCY. The governor by appointment shall
14 fill the unexpired term of a vacancy on the council.

15 Sec. 161.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.
16 (a) The governor shall designate a member of the council as the
17 presiding officer to serve in that capacity at the pleasure of the
18 governor.

19 (b) The members of the council shall elect any other
20 necessary officers.

21 (c) The council shall meet quarterly and at other times at
22 the call of the presiding officer. The council may hold meetings in
23 different areas of the state.

24 Sec. 161.027. REIMBURSEMENT FOR EXPENSES. A council member
25 may not receive compensation for service as a member of the council
26 but is entitled to reimbursement for travel expenses incurred by
27 the member while conducting the business of the council as provided

1 by the General Appropriations Act.

2 Sec. 161.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

3 (a) The commissioner of health and human services, with the advice
4 of the council, shall prepare information of public interest
5 describing the functions of the department and the procedures by
6 which complaints are filed with and resolved by the department. The
7 commission shall make the information available to the public and
8 appropriate state governmental entities.

9 (b) The commissioner of health and human services by rule
10 shall establish methods by which consumers and service recipients
11 are notified of the name, mailing address, and telephone number of
12 the department for directing complaints to the department.

13 Sec. 161.029. PUBLIC ACCESS AND TESTIMONY. (a) The
14 commissioner of health and human services shall develop and
15 implement policies that provide the public with a reasonable
16 opportunity to appear before the commission or the commissioner of
17 health and human services and to speak on any issue under the
18 jurisdiction of the department.

19 (b) The commissioner shall grant an opportunity for a public
20 hearing before the council makes recommendations to the
21 commissioner regarding a substantive rule if a public hearing is
22 requested by:

23 (1) at least 25 persons;

24 (2) a governmental entity; or

25 (3) an association with at least 25 members.

26 (c) The commissioner shall consider fully all written and
27 oral submissions about a proposed rule.

1 chief administrative officer and as a liaison between the
2 department and commission.

3 (d) The commissioner shall administer this chapter under
4 operational policies established by the commissioner of health and
5 human services and in accordance with the memorandum of
6 understanding under Section 531.0055(k), Government Code, between
7 the commissioner and the commissioner of health and human services,
8 as adopted by rule.

9 Sec. 161.052. PERSONNEL. (a) The department may employ,
10 compensate, and prescribe the duties of personnel necessary and
11 suitable to administer this chapter.

12 (b) The commissioner of health and human services shall
13 prepare and by rule adopt personnel standards.

14 (c) A personnel position may be filled only by an individual
15 selected and appointed on a nonpartisan merit basis.

16 (d) The commissioner of health and human services, with the
17 advice of the council, shall develop and the department shall
18 implement policies that clearly define the responsibilities of the
19 staff of the department.

20 Sec. 161.053. INFORMATION ABOUT QUALIFICATIONS AND
21 STANDARDS OF CONDUCT. The commissioner or the commissioner's
22 designee shall provide to department employees, as often as
23 necessary, information regarding the requirements for employment
24 under this chapter or rules adopted by the commissioner of health
25 and human services, including information regarding a person's
26 responsibilities under applicable laws relating to standards of
27 conduct for state employees.

1 Sec. 161.054. MERIT PAY. Subject to rules adopted by the
2 commissioner of health and human services, the commissioner or the
3 commissioner's designee shall develop a system of annual
4 performance evaluations. All merit pay for department employees
5 must be given under the system established under this section or
6 under rules adopted by the commissioner of health and human
7 services.

8 Sec. 161.055. CAREER LADDER. The commissioner or the
9 commissioner's designee shall develop an intra-agency career
10 ladder program. The program must require intra-agency postings of
11 all nonentry-level positions concurrently with any public posting.

12 Sec. 161.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
13 Subject to rules adopted by the commissioner of health and human
14 services, the commissioner or the commissioner's designee shall
15 prepare and maintain a written policy statement that implements a
16 program of equal employment opportunity to ensure that all
17 personnel decisions are made without regard to race, color,
18 disability, sex, religion, age, or national origin.

19 (b) Unless the following are included in a policy statement
20 adopted by the commissioner of health and human services that is
21 applicable to the department, the policy statement must include:

22 (1) personnel policies, including policies relating
23 to recruitment, evaluation, selection, training, and promotion of
24 personnel, that show the intent of the department to avoid the
25 unlawful employment practices described by Chapter 21, Labor Code;
26 and

27 (2) an analysis of the extent to which the composition

1 of the department's personnel is in accordance with state and
2 federal law and a description of reasonable methods to achieve
3 compliance with state and federal law.

4 (c) The policy statement must be:

5 (1) updated annually;

6 (2) reviewed by the state Commission on Human Rights
7 for compliance with Subsection (b)(1); and

8 (3) filed with the governor's office.

9 Sec. 161.057. STATE EMPLOYEE INCENTIVE PROGRAM. The
10 commissioner or the commissioner's designee shall provide to
11 department employees information and training on the benefits and
12 methods of participation in the state employee incentive program.

13 [Sections 161.058-161.070 reserved for expansion]

14 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

15 Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The
16 department is responsible for administering human services
17 programs for the aging and disabled, including:

18 (1) administering and coordinating programs to
19 provide community-based care and support services to promote
20 independent living for populations that would otherwise be
21 institutionalized;

22 (2) providing institutional care services, including
23 services through convalescent and nursing homes and related
24 institutions under Chapter 242, Health and Safety Code;

25 (3) providing and coordinating programs and services
26 for persons with disabilities, including programs for the
27 treatment, rehabilitation, or benefit of persons with

1 developmental disabilities or mental retardation;

2 (4) operating state facilities for the housing,
3 treatment, rehabilitation, or benefit of persons with
4 disabilities, including state schools for persons with mental
5 retardation;

6 (5) serving as the state unit on aging required by the
7 federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)
8 and its subsequent amendments, including performing the general
9 functions under Section 101.022 to ensure:

10 (A) implementation of the federal Older
11 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its
12 subsequent amendments, including implementation of services and
13 volunteer opportunities under that Act for older residents of this
14 state through area agencies on aging;

15 (B) advocacy for residents of nursing facilities
16 through the office of the state long-term care ombudsman;

17 (C) fostering of the state and community
18 infrastructure and capacity to serve older residents of this state;
19 and

20 (D) availability of a comprehensive resource for
21 state government and the public on trends related to and services
22 and programs for an aging population;

23 (6) performing all licensing and enforcement
24 activities and functions related to long-term care facilities,
25 including licensing and enforcement activities related to
26 convalescent and nursing homes and related institutions under
27 Chapter 242, Health and Safety Code; and

1 (7) performing all licensing and enforcement
2 activities and functions related to home and community support
3 services agencies under Chapter 142, Health and Safety Code.

4 Sec. 161.072. INFORMATION REGARDING COMPLAINTS. (a) The
5 department shall maintain a file on each written complaint filed
6 with the department. The file must include:

7 (1) the name of the person who filed the complaint;

8 (2) the date the complaint is received by the
9 department;

10 (3) the subject matter of the complaint;

11 (4) the name of each person contacted in relation to
12 the complaint;

13 (5) a summary of the results of the review or
14 investigation of the complaint; and

15 (6) an explanation of the reason the file was closed,
16 if the department closed the file without taking action other than
17 to investigate the complaint.

18 (b) The department shall provide to the person filing the
19 complaint and to each person who is a subject of the complaint a
20 copy of the commissioner of health and human services' and the
21 department's policies and procedures relating to complaint
22 investigation and resolution.

23 (c) The department, at least quarterly until final
24 disposition of the complaint, shall notify the person filing the
25 complaint and each person who is a subject of the complaint of the
26 status of the investigation unless the notice would jeopardize an
27 undercover investigation.

1 Sec. 161.073. RULES. The commissioner of health and human
2 services may adopt rules reasonably necessary for the department to
3 administer this chapter, consistent with the memorandum of
4 understanding under Section 531.0055(k), Government Code, between
5 the commissioner and the commissioner of health and human services,
6 as adopted by rule.

7 SECTION 1.14. APPOINTMENT OF COMMISSIONERS. (a) As soon as
8 possible, the governor shall appoint the commissioners of:

9 (1) the Department of Health Services in accordance
10 with Chapter 1001, Health and Safety Code, as added by this article;

11 (2) the Department of Protective Services in
12 accordance with Chapter 40, Human Resources Code, as amended by
13 this article; and

14 (3) the Department of Supportive Services in
15 accordance with Chapter 161, Human Resources Code, as added by this
16 article.

17 (b) The governor shall make the appointments of the
18 commissioners required by this section so that the ethnic diversity
19 of this state is reflected in those appointments.

20 SECTION 1.15. APPOINTMENTS OF COUNCIL MEMBERS. (a) As soon
21 as possible, the governor shall appoint the members of the Health
22 Services Council in accordance with Chapter 1001, Health and Safety
23 Code, as added by this article. In making the initial appointments,
24 the governor shall designate three members for terms expiring
25 February 1, 2005, three members for terms expiring February 1,
26 2007, and three members for terms expiring February 1, 2009.

27 (b) As soon as possible, the governor shall appoint the

1 members of the Protective Services Council in accordance with
2 Chapter 40, Human Resources Code, as amended by this article. In
3 making the initial appointments, the governor shall designate three
4 members for terms expiring February 1, 2005, three members for
5 terms expiring February 1, 2007, and three members for terms
6 expiring February 1, 2009.

7 (c) As soon as possible, the governor shall appoint the
8 members of the Supportive Services Council in accordance with
9 Chapter 161, Human Resources Code, as added by this article. In
10 making the initial appointments, the governor shall designate three
11 members for terms expiring February 1, 2005, three members for
12 terms expiring February 1, 2007, and three members for terms
13 expiring February 1, 2009.

14 (d) As soon as possible, the governor shall appoint the
15 members of the Health and Human Services Council in accordance with
16 Chapter 531, Government Code, as amended by this article. In making
17 the initial appointments, the governor shall designate three
18 members for terms expiring February 1, 2005, three members for
19 terms expiring February 1, 2007, and three members for terms
20 expiring February 1, 2009.

21 SECTION 1.16. LIMITATION ON ACTIVITIES. A state agency
22 created under this article may, before the date specified in the
23 transition plan required under Section 1.23 of this article,
24 perform only those powers, duties, functions, programs, and
25 activities that relate to preparing for the transfer of powers,
26 duties, functions, programs, and activities to that agency in
27 accordance with this article. A state agency created under this

1 article may not operate all or any part of a health and human
2 services program before the date specified in the transition plan
3 required under Section 1.23 of this article.

4 SECTION 1.17. INITIAL COUNCIL MEETINGS. The presiding
5 officer of the council for each state agency created under this
6 article and the presiding officer of the Protective Services
7 Council shall call the initial meeting of the council as soon as
8 possible after the council members are appointed.

9 SECTION 1.18. TRANSFERS TO THE HEALTH AND HUMAN SERVICES
10 COMMISSION. (a) On the date specified in the transition plan
11 required under Section 1.23 of this article, the following powers,
12 duties, functions, programs, and activities are transferred to the
13 Health and Human Services Commission:

14 (1) all powers, duties, functions, programs, and
15 activities related to administrative support services, such as
16 strategic planning and evaluation, audit, legal, human resources,
17 information resources, accounting, purchasing, financial
18 management, and contract management services, of a state agency or
19 entity abolished by Section 1.25 of this article;

20 (2) all powers, duties, functions, programs, and
21 activities of the Texas Department of Human Services related to:

22 (A) determining eligibility for long-term care
23 services and community-based support services;

24 (B) the financial assistance program under
25 Chapter 31, Human Resources Code;

26 (C) the nutritional assistance programs under
27 Chapter 33, Human Resources Code;

1 (D) preventing family violence and providing
2 services to victims of family violence; and

3 (E) the Texas Department of Human Services office
4 of inspector general;

5 (3) all powers, duties, functions, programs, and
6 activities related to the following programs administered by a
7 state agency or entity abolished by Section 1.25 of this article:

8 (A) the state child health plan program under
9 Chapters 62 and 63, Health and Safety Code; and

10 (B) the medical assistance program under Chapter
11 32, Human Resources Code;

12 (4) all powers, duties, functions, programs, and
13 activities of the Texas Rehabilitation Commission;

14 (5) all powers, duties, functions, programs, and
15 activities of the Texas Commission for the Blind;

16 (6) all powers, duties, functions, programs, and
17 activities of the Texas Commission for the Deaf and Hard of Hearing;
18 and

19 (7) all rulemaking and policymaking authority for the
20 provision of health and human services in this state.

21 (b) On the date specified by Subsection (a) of this section:

22 (1) all obligations and contracts of a state agency or
23 entity abolished by Section 1.25 of this article that are related to
24 a power, duty, function, program, or activity transferred under
25 Subsection (a) of this section are transferred to the Health and
26 Human Services Commission;

27 (2) all property and records in the custody of a state

1 agency or entity abolished by Section 1.25 of this article that are
2 related to a power, duty, function, program, or activity
3 transferred under Subsection (a) of this section and all funds
4 appropriated by the legislature for the power, duty, function,
5 program, or activity shall be transferred to the Health and Human
6 Services Commission; and

7 (3) all complaints, investigations, or contested
8 cases that are pending before a state agency or entity abolished by
9 Section 1.25 of this article or the governing body of the agency or
10 entity and that are related to a power, duty, function, program, or
11 activity transferred under Subsection (a) of this section are
12 transferred without change in status to the Health and Human
13 Services Commission.

14 (c) A rule or form adopted by a state agency or entity
15 abolished by Section 1.25 of this article that relates to a power,
16 duty, function, program, or activity transferred under Subsection
17 (a) of this section is a rule or form of the Health and Human
18 Services Commission and remains in effect until altered by the
19 commission.

20 (d) A reference in law to a state agency or entity abolished
21 by Section 1.25 of this article, or to the governing body of the
22 agency or entity, that relates to a power, duty, function, program,
23 or activity transferred under Subsection (a) of this section means
24 the Health and Human Services Commission.

25 (e) A license, permit, or certification in effect that was
26 issued by a state agency or entity abolished by Section 1.25 of this
27 article and that relates to a power, duty, function, program, or

1 activity transferred under Subsection (a) of this section is
2 continued in effect as a license, permit, or certification of the
3 Health and Human Services Commission.

4 (f) All powers, duties, functions, programs, and activities
5 relating to audits, including internal audits, transferred to the
6 Health and Human Services Commission under Subsection (a)(1) of
7 this section, and all powers, duties, functions, programs, and
8 activities relating to the Texas Department of Human Services
9 office of inspector general transferred to the Health and Human
10 Services Commission under Subsection (a)(2)(D) of this section,
11 shall be assumed by the commission's office of inspector general.
12 Notwithstanding any other provision of law, a reference in law to
13 the Texas Department of Human Services office of inspector general
14 means the commission's office of inspector general.

15 SECTION 1.19. TRANSFERS TO THE DEPARTMENT OF HEALTH
16 SERVICES. (a) On the date specified in the transition plan
17 required under Section 1.23 of this article, the following powers,
18 duties, functions, programs, and activities, other than those
19 related to rulemaking or policymaking or administrative support
20 services such as strategic planning and evaluation, audit, legal,
21 human resources, information resources, accounting, purchasing,
22 financial management, and contract management services, are
23 transferred to the Department of Health Services:

24 (1) except as provided by Section 1.18 of this
25 article, all powers, duties, functions, programs, and activities of
26 the Texas Department of Health;

27 (2) all powers, duties, functions, programs, and

1 activities of the Texas Department of Mental Health and Mental
2 Retardation relating to providing mental health services;

3 (3) all powers, duties, functions, programs, and
4 activities of the Texas Commission on Alcohol and Drug Abuse;

5 (4) all powers, duties, functions, programs, and
6 activities of the Interagency Council on Early Childhood
7 Intervention; and

8 (5) all powers, duties, functions, programs, and
9 activities of the Texas Health Care Information Council.

10 (b) On the date specified by Subsection (a) of this section:

11 (1) all obligations and contracts of an entity listed
12 in Subsection (a) of this section that are related to a power, duty,
13 function, program, or activity transferred under that subsection
14 are transferred to the Department of Health Services;

15 (2) all property and records in the custody of an
16 entity listed in Subsection (a) of this section that are related to
17 a power, duty, function, program, or activity transferred under
18 that subsection and all funds appropriated by the legislature for
19 the power, duty, function, program, or activity shall be
20 transferred to the Department of Health Services; and

21 (3) all complaints, investigations, or contested
22 cases that are pending before an entity or the governing body of an
23 entity listed in Subsection (a) of this section and that are related
24 to a power, duty, function, program, or activity transferred under
25 that subsection are transferred without change in status to the
26 Department of Health Services.

27 (c) A rule or form adopted by an entity listed in Subsection

1 (a) of this section that relates to a power, duty, function,
2 program, or activity transferred under that subsection is a rule or
3 form of the Department of Health Services and remains in effect
4 until altered by the commissioner of health and human services.

5 (d) A reference in law to an entity listed in Subsection (a)
6 of this section that relates to a power, duty, function, program, or
7 activity transferred under that subsection means the Department of
8 Health Services. A reference in law to the governing body of an
9 entity listed in Subsection (a) of this section means the Health and
10 Human Services Commission or the commissioner of health and human
11 services.

12 (e) A license, permit, or certification in effect that was
13 issued by an entity listed in Subsection (a) of this section and
14 that relates to a power, duty, function, program, or activity
15 transferred under that subsection is continued in effect as a
16 license, permit, or certification of the Department of Health
17 Services.

18 SECTION 1.20. TRANSFERS TO THE DEPARTMENT OF PROTECTIVE
19 SERVICES. (a) On the date specified in the transition plan
20 required under Section 1.23 of this article, the following powers,
21 duties, functions, programs, and activities, other than those
22 related to rulemaking or policymaking or administrative support
23 services such as strategic planning and evaluation, audit, legal,
24 human resources, information resources, accounting, purchasing,
25 financial management, and contract management services, are
26 transferred to the Department of Protective Services:

27 (1) except as provided by Sections 1.18 and 1.21 of

1 this article, all powers, duties, functions, programs, and
2 activities of the Texas Department of Human Services; and

3 (2) all powers, duties, functions, programs, and
4 activities of a state agency or entity abolished by Section 1.25 of
5 this article related to the investigation of abuse or neglect of
6 persons residing in long-term care facilities.

7 (b) On the date specified by Subsection (a) of this section:

8 (1) all obligations and contracts of an entity listed
9 in Subsection (a) of this section that are related to a power, duty,
10 function, program, or activity transferred under that subsection
11 are transferred to the Department of Protective Services;

12 (2) all property and records in the custody of an
13 entity listed in Subsection (a) of this section that are related to
14 a power, duty, function, program, or activity transferred under
15 that subsection and all funds appropriated by the legislature for
16 the power, duty, function, program, or activity shall be
17 transferred to the Department of Protective Services; and

18 (3) all complaints, investigations, or contested
19 cases that are pending before an entity or the governing body of an
20 entity listed in Subsection (a) of this section and that are related
21 to a power, duty, function, program, or activity transferred under
22 that subsection are transferred without change in status to the
23 Department of Protective Services.

24 (c) A rule or form adopted by an entity listed in Subsection
25 (a) of this section that relates to a power, duty, function,
26 program, or activity transferred under that subsection is a rule or
27 form of the Department of Protective Services and remains in effect

1 until altered by the commissioner of health and human services.

2 (d) A reference in law to an entity listed in Subsection (a)
3 of this section that relates to a power, duty, function, program, or
4 activity transferred under that subsection means the Department of
5 Protective Services. A reference in law to the governing body of an
6 entity listed in Subsection (a) of this section means the Health and
7 Human Services Commission or the commissioner of health and human
8 services.

9 (e) A license, permit, or certification in effect that was
10 issued by an entity listed in Subsection (a) of this section and
11 that relates to a power, duty, function, program, or activity
12 transferred under that subsection is continued in effect as a
13 license, permit, or certification of the Department of Protective
14 Services.

15 SECTION 1.21. TRANSFERS TO THE DEPARTMENT OF SUPPORTIVE
16 SERVICES. (a) On the date specified in the transition plan
17 required under Section 1.23 of this article, the following powers,
18 duties, functions, programs, and activities, other than those
19 related to rulemaking or policymaking or administrative support
20 services such as strategic planning and evaluation, audit, legal,
21 human resources, information resources, accounting, purchasing,
22 financial management, and contract management services, are
23 transferred to the Department of Supportive Services:

24 (1) all powers, duties, functions, programs, and
25 activities of the Texas Department on Aging;

26 (2) except as provided by Section 1.18 of this
27 article, from the Texas Department of Human Services, all powers,

1 duties, functions, programs, and activities related to providing
2 long-term care services and community-based support and services,
3 licensing and enforcing regulations applicable to long-term care
4 facilities, and licensing and enforcing regulations applicable to
5 home and community support services agencies; and

6 (3) all powers, duties, functions, programs, and
7 activities of the Texas Department of Mental Health and Mental
8 Retardation related to providing mental retardation services,
9 including state school administration and services and community
10 residential services.

11 (b) On the date specified by Subsection (a) of this section:

12 (1) all obligations and contracts of an entity listed
13 in Subsection (a) of this section that are related to a power, duty,
14 function, program, or activity transferred under that subsection
15 are transferred to the Department of Supportive Services;

16 (2) all property and records in the custody of an
17 entity listed in Subsection (a) of this section that are related to
18 a power, duty, function, program, or activity transferred under
19 that subsection and all funds appropriated by the legislature for
20 the power, duty, function, program, or activity shall be
21 transferred to the Department of Supportive Services; and

22 (3) all complaints, investigations, or contested
23 cases that are pending before an entity or the governing body of an
24 entity listed in Subsection (a) of this section and that are related
25 to a power, duty, function, program, or activity transferred under
26 that subsection are transferred without change in status to the
27 Department of Supportive Services.

1 (c) A rule or form adopted by an entity listed in Subsection
2 (a) of this section that relates to a power, duty, function,
3 program, or activity transferred under that subsection is a rule or
4 form of the Department of Supportive Services and remains in effect
5 until altered by the commissioner of health and human services.

6 (d) A reference in law to an entity listed in Subsection (a)
7 of this section that relates to a power, duty, function, program, or
8 activity transferred under that subsection means the Department of
9 Supportive Services. A reference in law to the governing body of an
10 entity listed in Subsection (a) of this section means the Health and
11 Human Services Commission or the commissioner of health and human
12 services.

13 (e) A license, permit, or certification in effect that was
14 issued by an entity listed in Subsection (a) of this section and
15 that relates to a power, duty, function, program, or activity
16 transferred under that subsection is continued in effect as a
17 license, permit, or certification of the Department of Supportive
18 Services.

19 SECTION 1.22. FACILITATION OF TRANSFERS BY HEALTH AND HUMAN
20 SERVICES TRANSITION COUNCIL. (a) The Health and Human Services
21 Transition Council is created to facilitate the transfer of powers,
22 duties, functions, programs, and activities among the state's
23 health and human services agencies and the Health and Human
24 Services Commission as provided by this article with a minimal
25 negative effect on the delivery of those services in this state.

26 (b) The council is composed of 10 members, as follows:

27 (1) the commissioner of health and human services;

1 (2) two members of the senate, appointed by the
2 lieutenant governor not later than October 1, 2003;

3 (3) two members of the house of representatives,
4 appointed by the speaker of the house of representatives not later
5 than October 1, 2003; and

6 (4) five members of the public, appointed by the
7 governor not later than October 1, 2003.

8 (c) The commissioner of health and human services serves as
9 presiding officer. The members of the council shall elect any other
10 necessary officers.

11 (d) The council shall meet at the call of the presiding
12 officer.

13 (e) A member of the council serves at the will of the
14 appointing official.

15 (f) A member of the council may not receive compensation for
16 serving on the council but is entitled to reimbursement for travel
17 expenses incurred by the member while conducting the business of
18 the council as provided by the General Appropriations Act.

19 (g) The council, with assistance from the Health and Human
20 Services Commission and the health and human services agencies,
21 shall advise the commissioner of health and human services
22 concerning:

23 (1) the powers, duties, functions, programs, and
24 activities transferred under this article and the funds and
25 obligations that are related to the powers, duties, functions,
26 programs, or activities; and

27 (2) the transfer of the powers, duties, functions,

1 programs, activities, records, property, funds, obligations, and
2 employees by the entities listed in Sections 1.18, 1.19, 1.20, and
3 1.21 of this article in accordance with this article.

4 (h) The council shall fully consider all written and oral
5 submissions made on any matter or issue under the council's
6 jurisdiction.

7 (i) Chapter 551, Government Code, applies to the council.

8 (j) The council is abolished December 31, 2004.

9 SECTION 1.23. TRANSITION PLAN. (a) The transfer of powers,
10 duties, functions, programs, and activities under Sections 1.18,
11 1.19, 1.20, and 1.21 of this article to the Health and Human
12 Services Commission, the Department of Health Services, the
13 Department of Protective Services, and the Department of Supportive
14 Services, respectively, must be accomplished in accordance with a
15 schedule included in a transition plan developed by the
16 commissioner of health and human services and submitted to the
17 governor and the Legislative Budget Board not later than December
18 1, 2003. The commissioner shall provide to the governor and the
19 Legislative Budget Board transition plan status reports and updates
20 on at least a quarterly basis following submission of the initial
21 transition plan. The transition plan must be made available to the
22 public.

23 (b) Not later than November 1, 2003, the Health and Human
24 Services Commission shall hold a public hearing and accept public
25 comment regarding the transition plan required to be developed by
26 the commissioner of health and human services under Subsection (a)
27 of this section.

1 (c) In developing the transition plan, the commissioner of
2 health and human services shall hold public hearings in various
3 geographic areas in this state before submitting the plan to the
4 governor and the Legislative Budget Board as required by this
5 section.

6 SECTION 1.24. APPLICABILITY OF FORMER LAW. An action
7 brought or proceeding commenced before the date of a transfer
8 prescribed by this article in accordance with the transition plan
9 required under Section 1.23 of this article, including a contested
10 case or a remand of an action or proceeding by a reviewing court, is
11 governed by the laws and rules applicable to the action or
12 proceeding before the transfer.

13 SECTION 1.25. WORK PLAN FOR HEALTH AND HUMAN SERVICES
14 AGENCIES. (a) The Health and Human Services Commission, the
15 Department of Protective Services, and each health and human
16 services agency created under this article shall implement the
17 powers, duties, functions, programs, and activities assigned to the
18 agency under this article in accordance with a work plan designed by
19 the commission to ensure that the transfer and provision of health
20 and human services in this state are accomplished in a careful and
21 deliberative manner.

22 (b) A work plan designed by the commission under this
23 section must include the following phases:

24 (1) a planning phase, during which the agency will
25 focus on and stabilize the organization of the agency's powers,
26 duties, functions, programs, and activities, and which must
27 include:

1 (A) initiation of recommendations made by the
2 Health and Human Services Transition Council;

3 (B) creation of interagency and intra-agency
4 steering committees;

5 (C) development of global visions, goals, and
6 organizational strategies; and

7 (D) development of communications and risk
8 management plans;

9 (2) an integration phase, during which the agency will
10 identify opportunities and problems and design customized
11 solutions for those problems, and which must include:

12 (A) identification of key issues for the agency
13 relating to the Texas Integrated Eligibility Redesign System,
14 waivers needed from federal agencies, costs, or legal requirements
15 for other agency activities;

16 (B) planning for daily operations;

17 (C) validation of fiscal and program synergies;

18 (D) definition and building of a program
19 management office; and

20 (E) development of performance measures, related
21 tracking measures and tools, and risk mitigation initiatives;

22 (3) an optimization phase, during which the agency
23 will complete and expand on the initial health and human services
24 transitions, and which must include:

25 (A) optimization of initial implementation
26 initiatives;

27 (B) use of enterprise teaming operations;

1 (C) building infrastructures to support and
2 facilitate changes in the delivery of health and human services;
3 and

4 (D) identification and use of beneficial assets
5 management and facilities approaches; and

6 (4) a transformation phase, during which the agency
7 will continue implementing initial and additional changes to the
8 delivery of health and human services, and which must include:

9 (A) implementation of changes in agency
10 management activities;

11 (B) continuation of risk assessments; and

12 (C) conducting a transformation review of the
13 changes to the delivery of health and human services.

14 SECTION 1.26. ABOLITION OF STATE AGENCIES AND ENTITIES. (a)
15 The following state agencies and entities are abolished on the date
16 on which their respective powers, duties, functions, programs, and
17 activities are transferred under this article:

18 (1) the Interagency Council on Early Childhood
19 Intervention;

20 (2) the Texas Commission for the Blind;

21 (3) the Texas Commission for the Deaf and Hard of
22 Hearing;

23 (4) the Texas Commission on Alcohol and Drug Abuse;

24 (5) the Texas Department of Health;

25 (6) the Texas Department of Human Services;

26 (7) the Texas Department of Mental Health and Mental
27 Retardation;

1 (8) the Texas Department on Aging;

2 (9) the Texas Health Care Information Council; and

3 (10) the Texas Rehabilitation Commission.

4 (b) The abolition of a state agency or entity listed in
5 Subsection (a) of this section and the transfer of its powers,
6 duties, functions, programs, activities, obligations, rights,
7 contracts, records, property, funds, and employees as provided by
8 this article do not affect or impair an act done, any obligation,
9 right, order, permit, certificate, rule, criterion, standard, or
10 requirement existing, or any penalty accrued under former law, and
11 that law remains in effect for any action concerning those matters.

12 SECTION 1.27. A reference in law to the Department of
13 Protective and Regulatory Services means the Department of
14 Protective Services.

15 SECTION 1.28. REPEAL. The following are repealed:

16 (1) Sections 531.0057, 531.034, and 531.0345,
17 Government Code;

18 (2) Sections 40.0225 and 40.023, Human Resources Code;
19 and

20 (3) Article 2, Chapter 1505, Acts of the 76th
21 Legislature, Regular Session, 1999.

22 SECTION 1.29. EFFECTIVE DATE. (a) Except as provided by
23 Subsection (b) of this section, this article takes effect September
24 1, 2003.

25 (b) The Department of Health Services and the Department of
26 Supportive Services are created on the date the governor appoints
27 the commissioner of the respective agency.

1 ARTICLE 2. ADMINISTRATION, OPERATION, AND FINANCING OF
2 HEALTH AND HUMAN SERVICES PROGRAMS AND PROVISION OF
3 HEALTH AND HUMAN SERVICES

4 SECTION 2.01. Section 531.001, Government Code, is amended
5 by adding Subdivision (1-a) to read as follows:

6 (1-a) "Child health plan program" means the child
7 health plan program established under Chapters 62 and 63, Health
8 and Safety Code.

9 SECTION 2.02. (a) Subchapter A, Chapter 531, Government
10 Code, is amended by adding Section 531.017 to read as follows:

11 Sec. 531.017. PURCHASING DIVISION. (a) The commission
12 shall establish a purchasing division for the management of
13 administrative activities related to the purchasing functions of
14 the commission and the health and human services agencies.

15 (b) The purchasing division shall:

16 (1) seek to achieve targeted cost reductions, increase
17 process efficiencies, improve technological support and customer
18 services, and enhance purchasing support for each health and human
19 services agency; and

20 (2) if cost-effective, contract with private entities
21 to perform purchasing functions for the commission and the health
22 and human services agencies.

23 (b) Not later than January 1, 2004, the Health and Human
24 Services Commission shall develop and implement a plan to
25 consolidate the purchasing functions of the commission and health
26 and human services agencies in a purchasing division under Section
27 531.017, Government Code, as added by this section.

1 SECTION 2.03. Section 531.021, Government Code, is amended
2 by adding Subsection (c) to read as follows:

3 (c) The commission in its adoption of reasonable rules and
4 standards under Subsection (b)(2) shall include financial
5 performance standards that, in the event of a proposed rate
6 reduction, provide private ICF-MR facilities and home and
7 community-based services providers with flexibility in determining
8 how to use medical assistance payments to provide services in the
9 most cost-effective manner.

10 SECTION 2.04. Subchapter B, Chapter 531, Government Code,
11 is amended by adding Section 531.0335 to read as follows:

12 Sec. 531.0335. PROHIBITION ON PUNITIVE ACTION FOR FAILURE
13 TO IMMUNIZE. (a) In this section:

14 (1) "Person responsible for a child's care, custody,
15 or welfare" has the meaning assigned by Section 261.001, Family
16 Code.

17 (2) "Punitive action" includes the initiation of an
18 investigation of a person responsible for a child's care, custody,
19 or welfare for alleged or suspected abuse or neglect of a child.

20 (b) The commissioner by rule shall prohibit a health and
21 human services agency from taking a punitive action against a
22 person responsible for a child's care, custody, or welfare for
23 failure of the person to ensure that the child receives the
24 immunization series prescribed by Section 161.004, Health and
25 Safety Code.

26 (c) This section does not affect a law, including Chapter
27 31, Human Resources Code, that specifically provides a punitive

1 action for failure to ensure that a child receives the immunization
2 series prescribed by Section 161.004, Health and Safety Code.

3 SECTION 2.05. Subchapter B, Chapter 531, Government Code,
4 is amended by adding Section 531.0392 to read as follows:

5 Sec. 531.0392. RECOVERY OF CERTAIN THIRD-PARTY
6 REIMBURSEMENTS UNDER MEDICAID. (a) In this section, "dually
7 eligible individual" means an individual who is eligible to receive
8 health care benefits under both the Medicaid and Medicare programs.

9 (b) The commission shall obtain Medicaid reimbursement from
10 each fiscal intermediary who makes a payment to a service provider
11 on behalf of the Medicare program, including a reimbursement for a
12 payment made to a home health services provider or nursing facility
13 for services rendered to a dually eligible individual.

14 SECTION 2.06. Subchapter B, Chapter 531, Government Code,
15 is amended by adding Section 531.063 to read as follows:

16 Sec. 531.063. CALL CENTER. (a) The commission, by rule,
17 shall establish a call center for purposes of determining and
18 certifying or recertifying a person's eligibility and need for
19 services related to the programs listed under Section 531.008(c),
20 if cost-effective.

21 (b) The commission shall contract with at least one but not
22 more than four private entities for the operation of a call center
23 required by this section unless the commission determines that
24 contracting for the operation of the center would not be
25 cost-effective.

26 (c) Translation services. Call centers shall provide
27 translation services as required by federal law for clients unable

1 to speak, hear, or comprehend the English language.

2 (d) The commission shall develop consumer service and
3 performance standards for the operation of a call center required
4 by this section. The standards shall address a call center's:

5 (1) ability to serve its consumers in a timely manner,
6 including consideration of the consumers' ability to access the
7 call center, whether the call center has toll-free telephone
8 access, the average amount of time a consumer spends on hold, the
9 frequency of call transfers, whether a consumer is able to
10 communicate with a live person at the call center, and whether the
11 call center makes mail correspondence available;

12 (2) staff, including employee courtesy, friendliness,
13 training, and knowledge about the programs listed under Section
14 531.008(c); and

15 (3) complaint handling procedures, including the
16 level of difficulty involved in filing a complaint and whether the
17 call center's complaint responses are timely.

18 (e) The commission shall make available to the public the
19 standards developed under Subsection (d).

20 (f) The commission shall develop:

21 (1) mechanisms for measuring consumer service
22 satisfaction; and

23 (2) performance measures to evaluate whether the call
24 center meets the standards developed under Subsection (d).

25 (g) The commission may inspect a call center and analyze its
26 consumer service performance through use of a consumer service
27 evaluator who poses as a consumer of the call center.

1 (h) Notwithstanding Subsection (a), the commissioner shall
2 develop and implement policies that provide an applicant for
3 services related to the programs listed under Section 531.008(c)
4 with an opportunity to appear in person to establish initial
5 eligibility or to comply with periodic eligibility recertification
6 requirements if the applicant requests a personal interview. This
7 subsection does not affect a law or rule that requires an applicant
8 to appear in person to establish initial eligibility or to comply
9 with periodic eligibility recertification requirements.

10 SECTION 2.07. (a) Subchapter B, Chapter 531, Government
11 Code, is amended by adding Section 531.065 to read as follows:

12 Sec. 531.065. CONSOLIDATION AND COORDINATION OF HEALTH
13 INSURANCE PREMIUM PAYMENT REIMBURSEMENT PROGRAMS. (a) The
14 commission shall develop and implement a plan to consolidate and
15 coordinate the administration of the health insurance premium
16 payment reimbursement programs prescribed by Section 62.059,
17 Health and Safety Code, and Section 32.0422, Human Resources Code.

18 (b) If cost-effective, the commission may contract with a
19 private entity to assist the commission in developing and
20 implementing a plan required by this section.

21 (b) Section 62.059(i), Health and Safety Code, and Section
22 32.0422(m), Human Resources Code, are repealed.

23 (c) Not later than January 1, 2004, the Health and Human
24 Services Commission shall develop and implement a plan to
25 consolidate and coordinate the administration of health insurance
26 premium payment reimbursement programs as required by Section
27 531.065, Government Code, as added by this section.

1 SECTION 2.08. Subchapter B, Chapter 531, Government Code,
2 is amended by adding Section 531.067 to read as follows:

3 Sec. 531.067. PUBLIC ASSISTANCE HEALTH BENEFIT REVIEW AND
4 DESIGN COMMITTEE. (a) The commission shall appoint a Public
5 Assistance Health Benefit Review and Design Committee. The
6 committee consists of nine representatives of health care providers
7 participating in the Medicaid program or the child health plan
8 program, or both. The committee membership must include at least
9 three representatives from each program.

10 (b) The commissioner shall designate one member to serve as
11 presiding officer for a term of two years.

12 (c) The committee shall meet at the call of the presiding
13 officer.

14 (d) The committee shall review and provide recommendations
15 to the commission regarding health benefits and coverages provided
16 under the state Medicaid program, the child health plan program,
17 and any other income-based health care program administered by the
18 commission or a health and human services agency. In performing its
19 duties under this subsection, the committee must:

20 (1) review prescription drug benefits provided under
21 each of the programs; and

22 (2) review procedures for addressing high utilization
23 of benefits by recipients.

24 (e) The commission shall provide administrative support and
25 resources as necessary for the committee to perform its duties
26 under this section.

27 (f) Section 2110.008 does not apply to the committee.

1 (g) In performing the duties under this section, the
2 commission may design and implement a program to improve and
3 monitor clinical and functional outcomes of a recipient of services
4 under the state child health plan or medical assistance program.
5 The program may use financial, clinical, and other criteria based
6 on pharmacy, medical services, and other claims data related to the
7 child health plan or the state medical assistance program. The
8 commission must report to the committee on the fiscal impact,
9 including any savings associated with the strategies utilized under
10 this section.

11 SECTION 2.09. Subchapter B, Chapter 531, Government Code,
12 is amended by adding Section 531.068 to read as follows:

13 Sec. 531.068. MEDICAID OR OTHER HEALTH BENEFIT COVERAGE.
14 In adopting rules or standards governing the state Medicaid program
15 or rules or standards for the development or implementation of
16 health benefit coverage for a program administered by the
17 commission or a health and human services agency, the commission
18 and each health and human services agency, as appropriate, may take
19 into consideration any recommendation made with respect to health
20 benefits provided under their respective programs or the state
21 Medicaid program by the Public Assistance Health Benefit Review and
22 Design Committee established under Section 531.067.

23 SECTION 2.10. Subchapter B, Chapter 531, Government Code,
24 is amended by adding Section 531.069 to read as follows:

25 Sec. 531.069. PERIODIC REVIEW OF VENDOR DRUG PROGRAM. (a)
26 The commission shall periodically review all purchases made under
27 the vendor drug program to determine the cost-effectiveness of

1 including a component for prescription drug benefits in any
2 capitation rate paid by the state under a Medicaid managed care
3 program or the child health plan program.

4 (b) In making the determination required by Subsection (a),
5 the commission shall consider the value of any prescription drug
6 rebates received by the state.

7 SECTION 2.11. (a) Subchapter B, Chapter 531, Government
8 Code, is amended by adding Section 531.070 to read as follows:

9 Sec. 531.070. SUPPLEMENTAL REBATES. (a) In this section:

10 (1) "Labeler" means a person that:

11 (A) has a labeler code from the United States
12 Food and Drug Administration under 21 C.F.R. Section 207.20; and

13 (B) receives prescription drugs from a
14 manufacturer or wholesaler and repackages those drugs for later
15 retail sale.

16 (2) "Manufacturer" means a manufacturer of
17 prescription drugs as defined by 42 U.S.C. Section 1396r-8(k)(5)
18 and its subsequent amendments, including a subsidiary or affiliate
19 of a manufacturer.

20 (3) "Wholesaler" means a person licensed under
21 Subchapter I, Chapter 431, Health and Safety Code.

22 (b) For purposes of this section, the term "supplemental
23 rebates" shall mean cash rebates paid by a pharmaceutical
24 manufacturer to the state on the basis of quarterly Medicaid
25 utilization data relating to such manufacturer's products,
26 pursuant to a state supplemental rebate agreement negotiated with
27 such manufacturer and approved by the federal government under

1 Section 1927 of the federal Social Security Act.

2 (c) The commission may enter into a written agreement with a
3 manufacturer to accept certain program benefits in lieu of
4 supplemental rebates, as such term is defined herein, only if:

5 (1) the program benefit yields savings that are at
6 least equal to the amount the manufacturer would have provided
7 under a state supplemental rebate agreement during the current
8 biennium as determined by such written agreement;

9 (2) the manufacturer posts a performance bond
10 guaranteeing savings to the state. If the savings are not achieved
11 in accordance with the written agreement, the manufacturer will
12 forfeit the bond to the state less any savings that were achieved;
13 and

14 (3) the program benefit is in addition to other
15 program benefits currently offered by the manufacturer to
16 recipients of medical assistance or related programs.

17 (d) For the purposes of this section, a program benefit may
18 mean disease management programs authorized under this title, drug
19 product donation programs, drug utilization control programs,
20 prescriber and beneficiary counseling and education, fraud and
21 abuse initiatives, and other services or administrative
22 investments with guaranteed savings to a program operated by a
23 health and human services agency.

24 (e) Other than as required to satisfy the provisions of this
25 section, such program investments shall be deemed an alternative
26 to, and not the equivalent of, supplemental rebates and shall be
27 treated in the state's submissions to the federal government

1 (including, as appropriate, waiver requests and quarterly Medicaid
2 claims) so as to maximize the availability of federal matching
3 payments.

4 (f) Agreements by the commission to accept program benefits
5 as defined by this section:

6 (1) may not prohibit the commission from entering into
7 similar agreements related to different drug classes with other
8 entities;

9 (2) shall be limited to a time period expressly
10 determined by the commission; and

11 (3) may only cover products that have received
12 approval by the Federal Drug Administration at the time of the
13 agreement, and new products approved after the agreement may be
14 incorporated only under an amendment to the agreement.

15 (g) For the purposes of this section, the commission may
16 consider a monetary contribution or donation to the arrangements
17 described in Subsection (b) for the purpose of offsetting
18 expenditures to other state health care programs, but which funding
19 shall not be used to offset expenditures for covered outpatient
20 drugs as defined by 42 U.S.C. Section 1396r-8(k)(2) under the
21 vendor drug program. An arrangement under this subsection may not
22 yield less than the amount the state would have benefited under a
23 supplemental rebate. The commission may consider an arrangement
24 under this section as satisfying the requirements related to
25 Section 531.072(b).

26 (h) Subject to Subsection (i), the commission shall
27 negotiate with manufacturers and labelers, including generic

1 manufacturers and labelers, to obtain supplemental rebates for
2 prescription drugs sold in this state.

3 (i) The commission may by contract authorize a private
4 entity to negotiate with manufacturers and labelers on behalf of
5 the commission.

6 (j) A manufacturer or labeler that sells prescription drugs
7 in this state may voluntarily negotiate with the commission and
8 enter into an agreement to provide supplemental rebates for
9 prescription drugs provided under:

10 (1) the Medicaid vendor drug program in excess of the
11 Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its
12 subsequent amendments;

13 (2) the child health plan program; and

14 (3) any other state program administered by the
15 commission, including community mental health centers and state
16 mental health hospitals.

17 (k) In negotiating terms for a supplemental rebate amount,
18 the commission shall consider:

19 (1) rebates calculated under the Medicaid rebate
20 program in accordance with 42 U.S.C. Section 1396r-8 and its
21 subsequent amendments;

22 (2) any other available information on prescription
23 drug prices or rebates; and

24 (3) other program benefits as specified in Subsection
25 (c).

26 (l) Each year the commission shall provide a written report
27 to the legislature and the governor. The report shall cover:

1 (1) the cost of administering the preferred drug lists
2 adopted under Section 531.072;

3 (2) an analysis of the utilization trends for medical
4 services provided by the state and any correlation to the preferred
5 drug lists;

6 (3) an analysis of the effect on health outcomes and
7 results for recipients; and

8 (4) statistical information related to the number of
9 approvals granted or denied.

10 (m) In negotiating terms for a supplemental rebate, the
11 commission shall utilize the average manufacturer price (AMP), as
12 defined in Section 1396r-8(k)(1) of the Omnibus Budget
13 Reconciliation Act of 1990, as the cost basis for the product.

14 (b) Not later than January 1, 2004, the Health and Human
15 Services Commission shall implement Section 531.070, Government
16 Code, as added by this section.

17 SECTION 2.12. Subchapter B, Chapter 531, Government Code,
18 is amended by adding Section 531.071 to read as follows:

19 Sec. 531.071. CONFIDENTIALITY OF INFORMATION REGARDING
20 DRUG REBATES, PRICING, AND NEGOTIATIONS. (a) Notwithstanding any
21 other state law, information obtained or maintained by the
22 commission regarding prescription drug rebate negotiations or a
23 supplemental medical assistance or other rebate agreement,
24 including trade secrets, rebate amount, rebate percentage, and
25 manufacturer or labeler pricing, is confidential and not subject to
26 disclosure under Chapter 552.

27 (b) Information that is confidential under Subsection (a)

1 includes information described by Subsection (a) that is obtained
2 or maintained by the commission in connection with the Medicaid
3 vendor drug program, the child health plan program, the kidney
4 health care program, or the children with special health care needs
5 program.

6 (c) General information about the aggregate costs of
7 different classes of drugs is not confidential under Subsection
8 (a).

9 SECTION 2.13. (a) Subchapter B, Chapter 531, Government
10 Code, is amended by adding Section 531.072 to read as follows:

11 Sec. 531.072. PREFERRED DRUG LISTS FOR MEDICAID AND CHILD
12 HEALTH PLAN PROGRAMS. (a) In a manner that complies with
13 applicable state and federal law, the commission shall adopt
14 preferred drug lists for the Medicaid vendor drug program and for
15 prescription drugs purchased through the child health plan program.

16 (b) The preferred drug lists may contain only drugs provided
17 by a manufacturer or labeler that reaches an agreement with the
18 commission on supplemental rebates under Section 531.070.

19 (c) In making a decision regarding the placement of a drug
20 on each of the preferred drug lists, the commission shall consider:

21 (1) the recommendations of the Pharmaceutical and
22 Therapeutics Committee established under Section 531.074;

23 (2) the clinical efficacy of the drug;

24 (3) the price of competing drugs after deducting any
25 federal and state rebate amounts; and

26 (4) program benefit offerings solely or in conjunction
27 with rebates and other pricing information.

1 (d) The commission shall provide for the distribution of
2 current copies of the preferred drug lists to all appropriate
3 health care providers in this state by posting the list on the
4 Internet. In addition, the commission shall mail copies of the
5 lists to any health care provider on request of that provider.

6 (e) In this subsection, "labeler" and "manufacturer" have
7 the meanings assigned by Section 531.070. The commission shall
8 ensure that:

9 (1) a manufacturer or labeler may submit written
10 evidence supporting the inclusion of a drug on the preferred drug
11 lists before a supplemental agreement is reached with the
12 commission; and

13 (2) any drug that has been approved or has had any of
14 its particular uses approved by the United States Food and Drug
15 Administration under a priority review classification will be
16 reviewed by the Pharmaceutical and Therapeutics Committee at the
17 next regularly scheduled meeting of the committee. On receiving
18 notice from a manufacturer or labeler of the availability of a new
19 product, the commission, to the extent possible, shall schedule a
20 review for the product at the next regularly scheduled meeting of
21 the committee.

22 (f) A recipient of drug benefits under the Medicaid vendor
23 drug program may appeal a denial of prior authorization under
24 Section 531.073 of a covered drug or covered dosage through the
25 Medicaid fair hearing process.

26 (b) Not later than March 1, 2004, the Health and Human
27 Services Commission shall adopt the preferred drug lists as

1 required by Section 531.072, Government Code, as added by this
2 section.

3 SECTION 2.14. Subchapter B, Chapter 531, Government Code,
4 is amended by adding Section 531.073 to read as follows:

5 Sec. 531.073. PRIOR AUTHORIZATION FOR CERTAIN PRESCRIPTION
6 DRUGS. (a) The commission, in its rules and standards governing
7 the Medicaid vendor drug program and the child health plan program,
8 shall require prior authorization for the reimbursement of a drug
9 that is not included in the appropriate preferred drug list adopted
10 under Section 531.072, except for any drug exempted from prior
11 authorization requirements by federal law. The commission shall
12 require that the prior authorization be obtained by the prescribing
13 physician.

14 (a-1) The commission shall delay requiring a prior
15 authorization for drugs listed in Subsection (a-2) until the
16 commission has completed a study evaluating the impact of a
17 requirement of prior authorization on the recipients of certain
18 drug classes.

19 (a-2) Drugs subject to the study in Subsection (a-1) include
20 drugs used in the treatment of:

- 21 (1) cancer and cancer-supportive care;
22 (2) end-stage renal disease;
23 (3) chronic nonmalignant pain;
24 (4) hemophilia; and
25 (5) multiple sclerosis.

26 (b) The commission shall establish procedures for the prior
27 authorization requirement under the Medicaid vendor drug program to

1 ensure that the requirements of 42 U.S.C. Section 1396r-8(d)(5) and
2 its subsequent amendments are met. Specifically, the procedures
3 must ensure that:

4 (1) a prior authorization requirement is not imposed
5 for a drug before the drug has been considered at a meeting of the
6 Pharmaceutical and Therapeutics Committee established under
7 Section 531.074;

8 (2) there will be a response to a request for prior
9 authorization by telephone or other telecommunications device
10 within 24 hours after receipt of a request for prior authorization;
11 and

12 (3) a 72-hour supply of the drug prescribed will be
13 provided in an emergency or if the commission does not provide a
14 response within the time required by Subdivision (2).

15 (c) The commission shall ensure that a prescription drug
16 prescribed before implementation of a prior authorization
17 requirement for that drug for a recipient under the child health
18 plan program, the Medicaid program, or another state program
19 administered by the commission or for a person who becomes eligible
20 under the child health plan program, the Medicaid program, or
21 another state program administered by the commission is not subject
22 to any requirement for prior authorization under this section
23 unless the recipient has exhausted all the prescription, including
24 any authorized refills, or a period prescribed by the commission
25 has expired, whichever occurs first.

26 (d) The commission shall implement procedures to ensure
27 that a recipient under the child health plan program, the Medicaid

1 program, or another state program administered by the commission or
2 a person who becomes eligible under the child health plan program,
3 the Medicaid program, or another state program administered by the
4 commission receives continuity of care in relation to certain
5 prescriptions identified by the commission.

6 (e) The commission may by contract authorize a private
7 entity to administer the prior authorization requirements imposed
8 by this section on behalf of the commission.

9 (f) The commission shall ensure that the prior
10 authorization requirements are implemented in a manner that
11 minimizes the cost to the state and any administrative burden
12 placed on providers.

13 SECTION 2.15. (a) Subchapter B, Chapter 531, Government
14 Code, is amended by adding Section 531.074 to read as follows:

15 Sec. 531.074. PHARMACEUTICAL AND THERAPEUTICS COMMITTEE.

16 (a) The Pharmaceutical and Therapeutics Committee is established
17 for the purposes of developing recommendations for a preferred drug
18 list for the Medicaid vendor drug program and a preferred drug list
19 for the child health plan program.

20 (b) The committee consists of the following members
21 appointed by the governor:

22 (1) six physicians licensed under Subtitle B, Title 3,
23 Occupations Code, and participating in the Medicaid program, at
24 least one of whom is a licensed physician who is actively engaged in
25 mental health providing care and treatment to persons with severe
26 mental illness and who has practice experience in the state
27 Medicaid plan; and

1 (2) five pharmacists licensed under Subtitle J, Title
2 3, Occupations Code, and participating in the Medicaid vendor drug
3 program.

4 (c) In making appointments to the committee under
5 Subsection (b), the governor shall ensure that the committee
6 includes physicians and pharmacists who:

7 (1) represent different specialties and provide
8 services to all segments of the Medicaid program's diverse
9 population;

10 (2) have experience in either developing or practicing
11 under a preferred drug list; and

12 (3) do not have a contractual relationship, ownership
13 interest, or other conflict of interest with an entity engaged by
14 the commission to assist in the development of the preferred drug
15 list or administration of the prior authorization system.

16 (d) A member of the committee is appointed for a two-year
17 term and may serve more than one term.

18 (e) The governor shall appoint a physician to be the
19 presiding officer of the committee. The presiding officer serves
20 at the pleasure of the governor.

21 (f) The committee shall meet at least monthly during the
22 six-month period following establishment of the committee to enable
23 the committee to develop recommendations for the initial preferred
24 drug lists. After that period, the committee shall meet at least
25 quarterly and at other times at the call of the presiding officer or
26 a majority of the committee members.

27 (g) A member of the committee may not receive compensation

1 for serving on the committee but is entitled to reimbursement for
2 reasonable and necessary travel expenses incurred by the member
3 while conducting the business of the committee, as provided by the
4 General Appropriations Act.

5 (h) In developing its recommendations for the preferred
6 drug lists, the committee shall consider the clinical efficacy,
7 safety, and cost-effectiveness and any program benefit associated
8 with a product.

9 (i) The commission shall adopt rules governing the
10 operation of the committee, including rules governing the
11 procedures used by the committee for providing notice of a meeting
12 and rules prohibiting the committee from discussing confidential
13 information described by Section 531.071 in a public meeting. The
14 committee shall comply with the rules adopted under this
15 subsection.

16 (j) To the extent feasible, the committee shall review all
17 drug classes included in the preferred drug lists adopted under
18 Section 531.072 at least once every 12 months and may recommend
19 inclusions to and exclusions from the list to ensure that the list
20 provides for cost-effective medically appropriate drug therapies
21 for Medicaid recipients and children receiving health benefits
22 coverage under the child health plan program.

23 (k) The commission shall provide administrative support and
24 resources as necessary for the committee to perform its duties.

25 (l) Chapter 2110 does not apply to the committee.

26 (b) Not later than November 1, 2003, the governor shall
27 appoint members to the Pharmaceutical and Therapeutics Committee

1 established under Section 531.074, Government Code, as added by
2 this section.

3 (c) Not later than January 1, 2004, the Pharmaceutical and
4 Therapeutics Committee established under Section 531.074,
5 Government Code, as added by this section, shall submit
6 recommendations for the preferred drug lists the committee is
7 required to develop under that section to the Health and Human
8 Services Commission.

9 SECTION 2.16. Subchapter B, Chapter 531, Government Code,
10 is amended by adding Section 531.075 to read as follows:

11 Sec. 531.075. PRIOR AUTHORIZATION FOR HIGH-COST MEDICAL
12 SERVICES. The commission may evaluate and implement, as
13 appropriate, procedures, policies, and methodologies to require
14 prior authorization for high-cost medical services and procedures
15 and may contract with qualified service providers or organizations
16 to perform those functions. Any such program shall recognize any
17 prohibitions in federal law on limits in the amount, duration, or
18 scope of medically necessary services for children on Medicaid.

19 SECTION 2.17. Subchapter B, Chapter 531, Government Code,
20 is amended by adding Section 531.076 to read as follows:

21 Sec. 531.076. UP TO SIX-BED FACILITY MODEL AUTHORIZED. (a)
22 The commission shall develop a plan to permit the use of a
23 residential program model of a facility of up to six beds in the
24 mental retardation Medicaid waiver program under the authority of
25 the Texas Department of Mental Health and Mental Retardation.

26 (b) The plan described in this section shall provide for
27 retaining a three-bed facility model and a planned, organized

1 transition from the four-bed facility model to the six-bed facility
2 model, which shall include:

3 (1) the evaluation of the feasibility of, and legal
4 and liability considerations related to, the use of contracted
5 workers in a residential setting, including any impediments in
6 current state regulations relating to the elimination of the staff
7 live-in limits and consumer residential assistance delegations;
8 and

9 (2) the development of a reimbursement rate for each
10 residential model that considers cost factors including but not
11 limited to:

12 (A) the adequacy of the current rate structure of
13 the three-bed and four-bed facility models and the rate for the
14 six-bed facility model;

15 (B) the adequacy of the occupancy factor;

16 (C) the adequacy of the resident leave factor;

17 (D) the transition costs, including those
18 related to real estate, vehicles, federal safety standards, and
19 consumer movement cost factors; and

20 (E) the inclusion of the same wage assumptions
21 for direct support staff that are provided under the reimbursement
22 methodology for ICF-MR facilities.

23 (c) The plan shall be developed with the assistance of a
24 work group which shall include members of the staff of the
25 commission, representatives of public providers, private
26 providers, and advocates. The plan shall be submitted to the
27 Governor's Office of Budget and Planning, the House Appropriations

1 Committee, and the Senate Finance Committee not later than
2 September 1, 2004.

3 SECTION 2.18. Subchapter B, Chapter 531, Government Code,
4 is amended by adding Section 531.077 to read as follows:

5 Sec. 531.077. MEDICAID PROGRAM. (a) The commissioner
6 shall ensure that the state Medicaid program implements 42 U.S.C.
7 Section 1396p(b)(1).

8 (b) The Medicaid account is an account in the general
9 revenue fund. Any funds recovered by implementing 42 U.S.C.
10 Section 1396p(b)(1) shall be deposited in the Medicaid account.
11 Money in the account may be appropriated only to fund long-term
12 care, including community-based care and facility-based care.

13 SECTION 2.19. (a) Section 531.101, Government Code, is
14 amended to read as follows:

15 Sec. 531.101. AWARD FOR REPORTING MEDICAID FRAUD, ABUSE, OR
16 OVERCHARGES. (a) The commission may grant an award to an individual
17 who reports activity that constitutes fraud or abuse of funds in the
18 state Medicaid program or reports overcharges in the program if the
19 commission determines that the disclosure results in the recovery
20 of an administrative penalty imposed under Section 32.039, Human
21 Resources Code. The commission may not grant an award to an
22 individual in connection with a report if the commission or
23 attorney general had independent knowledge of the activity reported
24 by the individual [~~overcharge or in the termination of the~~
25 ~~fraudulent activity or abuse of funds~~].

26 (b) The commission shall determine the amount of an award.
27 The award may not exceed five [~~must be equal to not less than 10~~]

1 percent of the amount of the administrative penalty imposed under
2 Section 32.039, Human Resources Code, [savings to this state] that
3 resulted [result] from the individual's disclosure. In determining
4 the amount of the award, the commission shall consider how
5 important the disclosure is in ensuring the fiscal integrity of the
6 program. The commission may also consider whether the individual
7 participated in the fraud, abuse, or overcharge.

8 (c) ~~[An award under this section is subject to~~
9 ~~appropriation. The award must be paid from money appropriated to or~~
10 ~~otherwise available to the commission, and additional money may not~~
11 ~~be appropriated to the commission for the purpose of paying the~~
12 ~~award.~~

13 ~~[(d) Payment of an award under this section from federal~~
14 ~~funds is subject to the permissible use under federal law of funds~~
15 ~~for this purpose.~~

16 ~~[(e)]~~ A person who brings an action under Subchapter C,
17 Chapter 36, Human Resources Code, is not eligible for an award under
18 this section.

19 (b) Section 531.101, Government Code, as amended by this
20 section, applies only to a report that occurs on or after the
21 effective date of this section. A report that occurs before the
22 effective date of this section is governed by the law in effect at
23 the time of the report, and the former law is continued in effect
24 for that purpose.

25 SECTION 2.20. (a) Section 531.102, Government Code, is
26 amended to read as follows:

27 Sec. 531.102. ~~[INVESTIGATIONS AND ENFORCEMENT]~~ OFFICE OF

1 INSPECTOR GENERAL. (a) The commission, through the commission's
2 office of inspector general [~~investigations and enforcement~~], is
3 responsible for the investigation of fraud and abuse in the
4 provision of health and human services and the enforcement of state
5 law relating to the provision of those services. The commission may
6 obtain any information or technology necessary to enable the office
7 to meet its responsibilities under this subchapter or other law.

8 (a-1) The governor shall appoint an inspector general to
9 serve as director of the office. The inspector general serves a
10 one-year term that expires on February 1.

11 (b) The commission, in consultation with the inspector
12 general, shall set clear objectives, priorities, and performance
13 standards for the office that emphasize:

14 (1) coordinating investigative efforts to
15 aggressively recover money;

16 (2) allocating resources to cases that have the
17 strongest supportive evidence and the greatest potential for
18 recovery of money; and

19 (3) maximizing opportunities for referral of cases to
20 the office of the attorney general in accordance with Section
21 531.103.

22 (c) The commission shall train office staff to enable the
23 staff to pursue priority Medicaid and other health and human
24 services [~~welfare~~] fraud and abuse cases as necessary.

25 (d) The commission may require employees of health and human
26 services agencies to provide assistance to the office [~~commission~~]
27 in connection with the office's [~~commission's~~] duties relating to

1 the investigation of fraud and abuse in the provision of health and
2 human services. The office is entitled to access to any information
3 maintained by a health and human services agency, including
4 internal records, relevant to the functions of the office.

5 (e) The commission, in consultation with the inspector
6 general, by rule shall set specific claims criteria that, when met,
7 require the office to begin an investigation.

8 (f)(1) If the commission receives a complaint of Medicaid
9 fraud or abuse from any source, the office must conduct an integrity
10 review to determine whether there is sufficient basis to warrant a
11 full investigation. An integrity review must begin not later than
12 the 30th day after the date the commission receives a complaint or
13 has reason to believe that fraud or abuse has occurred. An
14 integrity review shall be completed not later than the 90th day
15 after it began.

16 (2) If the findings of an integrity review give the
17 office reason to believe that an incident of fraud or abuse
18 involving possible criminal conduct has occurred in the Medicaid
19 program, the office must take the following action, as appropriate,
20 not later than the 30th day after the completion of the integrity
21 review:

22 (A) if a provider is suspected of fraud or abuse
23 involving criminal conduct, the office must refer the case to the
24 state's Medicaid fraud control unit, provided that the criminal
25 referral does not preclude the office from continuing its
26 investigation of the provider, which investigation may lead to the
27 imposition of appropriate administrative or civil sanctions; or

1 (B) if there is reason to believe that a
2 recipient has defrauded the Medicaid program, the office may
3 conduct a full investigation of the suspected fraud.

4 (g)(1) In addition to other instances authorized under
5 state or federal law, the office shall impose without prior notice a
6 hold on payment of claims for reimbursement submitted by a provider
7 to compel production of records or when requested by the state's
8 Medicaid fraud control unit, as applicable. The office must notify
9 the provider of the hold on payment not later than the fifth working
10 day after the date the payment hold is imposed.

11 (2) The office shall, in consultation with the state's
12 Medicaid fraud control unit, establish guidelines under which holds
13 on payment or program exclusions:

14 (A) may permissively be imposed on a provider; or

15 (B) shall automatically be imposed on a provider.

16 (3) Whenever the office learns or has reason to
17 suspect that a provider's records are being withheld, concealed,
18 destroyed, fabricated, or in any way falsified, the office shall
19 immediately refer the case to the state's Medicaid fraud control
20 unit. However, the criminal referral does not preclude the office
21 from continuing its investigation of the provider, which
22 investigation may lead to the imposition of appropriate
23 administrative or civil sanctions.

24 (h) In addition to performing functions and duties
25 otherwise provided by law, the office may:

26 (1) assess administrative penalties otherwise
27 authorized by law on behalf of the commission or a health and human

1 services agency;

2 (2) request that the attorney general obtain an
3 injunction to prevent a person from disposing of an asset
4 identified by the office as potentially subject to recovery by the
5 office due to the person's fraud or abuse;

6 (3) provide for coordination between the office and
7 special investigative units formed by managed care organizations
8 under Section 531.113 or entities with which managed care
9 organizations contract under that section;

10 (4) audit the use and effectiveness of state or
11 federal funds, including contract and grant funds, administered by
12 a person or state agency receiving the funds from a health and human
13 services agency;

14 (5) conduct investigations relating to the funds
15 described by Subdivision (4); and

16 (6) recommend policies promoting economical and
17 efficient administration of the funds described by Subdivision (4)
18 and the prevention and detection of fraud and abuse in
19 administration of those funds.

20 (i) Notwithstanding any other provision of law, a reference
21 in law or rule to the commission's office of investigations and
22 enforcement means the office of inspector general established under
23 this section.

24 (b) As soon as possible after the effective date of this
25 section, the governor shall appoint a person to serve as inspector
26 general in accordance with Section 531.102, Government Code, as
27 amended by this section. The initial term of the person appointed

1 in accordance with this subsection expires February 1, 2005.

2 SECTION 2.21. Subchapter C, Chapter 531, Government Code,
3 is amended by adding Section 531.1021 to read as follows:

4 Sec. 531.1021. SUBPOENAS. (a) The office of inspector
5 general may request that the commissioner or the commissioner's
6 designee approve the issuance by the office of a subpoena in
7 connection with an investigation conducted by the office. If the
8 request is approved, the office may issue a subpoena to compel the
9 attendance of a relevant witness or the production, for inspection
10 or copying, of relevant evidence that is in this state.

11 (b) A subpoena may be served personally or by certified
12 mail.

13 (c) If a person fails to comply with a subpoena, the office,
14 acting through the attorney general, may file suit to enforce the
15 subpoena in a district court in this state.

16 (d) On finding that good cause exists for issuing the
17 subpoena, the court shall order the person to comply with the
18 subpoena. The court may punish a person who fails to obey the court
19 order.

20 (e) The office shall pay a reasonable fee for photocopies
21 subpoenaed under this section in an amount not to exceed the amount
22 the office may charge for copies of its records.

23 (f) The reimbursement of the expenses of a witness whose
24 attendance is compelled under this section is governed by Section
25 2001.103.

26 (g) All information and materials subpoenaed or compiled by
27 the office in connection with an investigation are confidential and

1 not subject to disclosure under Chapter 552, and not subject to
2 disclosure, discovery, subpoena, or other means of legal compulsion
3 for their release to anyone other than the office or its employees
4 or agents involved in the investigation conducted by the office,
5 except that this information may be disclosed to the office of the
6 attorney general and law enforcement agencies.

7 SECTION 2.22. (a) Section 531.103, Government Code, is
8 amended to read as follows:

9 Sec. 531.103. INTERAGENCY COORDINATION. (a) The
10 commission, acting through the commission's office of inspector
11 general, and the office of the attorney general shall enter into a
12 memorandum of understanding to develop and implement joint written
13 procedures for processing cases of suspected fraud, waste, or
14 abuse, as those terms are defined by state or federal law, or other
15 violations of state or federal law under the state Medicaid program
16 or other program administered by the commission or a health and
17 human services agency, including the financial assistance program
18 under Chapter 31, Human Resources Code, a nutritional assistance
19 program under Chapter 33, Human Resources Code, and the child
20 health plan program. The memorandum of understanding shall
21 require:

22 (1) the office of inspector general [~~commission~~] and
23 the office of the attorney general to set priorities and guidelines
24 for referring cases to appropriate state agencies for
25 investigation, prosecution, or other disposition to enhance
26 deterrence of fraud, waste, [~~or~~] abuse, or other violations of
27 state or federal law, including a violation of Chapter 102,

1 Occupations Code, in the programs [~~program~~] and maximize the
2 imposition of penalties, the recovery of money, and the successful
3 prosecution of cases;

4 (1-a) the office of inspector general to refer each
5 case of suspected provider fraud, waste, or abuse to the office of
6 the attorney general not later than the 10th business day after the
7 date the office of inspector general determines that the existence
8 of fraud, waste, or abuse is reasonably indicated;

9 (1-b) the office of the attorney general to take
10 appropriate action in response to each case referred to the
11 attorney general, which action may include direct initiation of
12 prosecution or civil litigation or referral to an appropriate
13 United States attorney, a district attorney, a county attorney, or
14 a collections agency for initiation of prosecution, civil
15 litigation, or other appropriate action;

16 (2) the office of inspector general [~~commission~~] to
17 keep detailed records for cases processed by that office [~~the~~
18 ~~commission~~] or the office of the attorney general, including
19 information on the total number of cases processed and, for each
20 case:

21 (A) the agency and division to which the case is
22 referred for investigation;

23 (B) the date on which the case is referred; and

24 (C) the nature of the suspected fraud, waste, or
25 abuse;

26 (3) the office of inspector general [~~commission~~] to
27 notify each appropriate division of the office of the attorney

1 general of each case referred by the office of inspector general
2 [~~commission~~];

3 (4) the office of the attorney general to ensure that
4 information relating to each case investigated by that office is
5 available to each division of the office with responsibility for
6 investigating suspected fraud, waste, or abuse;

7 (5) the office of the attorney general to notify the
8 office of inspector general [~~commission~~] of each case the attorney
9 general declines to prosecute or prosecutes unsuccessfully;

10 (6) representatives of the office of inspector general
11 [~~commission~~] and of the office of the attorney general to meet not
12 less than quarterly to share case information and determine the
13 appropriate agency and division to investigate each case; and

14 (7) the office of inspector general [~~commission~~] and
15 the office of the attorney general to submit information requested
16 by the comptroller about each resolved case for the comptroller's
17 use in improving fraud detection.

18 (b) An exchange of information under this section between
19 the office of the attorney general and the commission, the office of
20 inspector general, or a health and human services agency does not
21 affect whether the information is subject to disclosure under
22 Chapter 552.

23 (c) The commission and the office of the attorney general
24 shall jointly prepare and submit a semiannual report to the
25 governor, lieutenant governor, [~~and~~] speaker of the house of
26 representatives, and comptroller concerning the activities of
27 those agencies in detecting and preventing fraud, waste, and abuse

1 under the state Medicaid program or other program administered by
2 the commission or a health and human services agency. The report
3 may be consolidated with any other report relating to the same
4 subject matter the commission or office of the attorney general is
5 required to submit under other law.

6 (d) The commission and the office of the attorney general
7 may not assess or collect investigation and attorney's fees on
8 behalf of any state agency unless the office of the attorney general
9 or other state agency collects a penalty, restitution, or other
10 reimbursement payment to the state.

11 (e) In addition to the provisions required by Subsection
12 (a), the memorandum of understanding required by this section must
13 also ensure that no barriers to direct fraud referrals to the office
14 of the attorney general's Medicaid fraud control unit or
15 unreasonable impediments to communication between Medicaid agency
16 employees and the Medicaid fraud control unit are imposed, and must
17 include procedures to facilitate the referral of cases directly to
18 the office of the attorney general. [~~The commission shall refer a~~
19 ~~case of suspected fraud, waste, or abuse under the state Medicaid~~
20 ~~program to the appropriate district attorney, county attorney, city~~
21 ~~attorney, or private collection agency if the attorney general~~
22 ~~fails to act within 30 days of referral of the case to the office of~~
23 ~~the attorney general. A failure by the attorney general to act~~
24 ~~within 30 days constitutes approval by the attorney general under~~
25 ~~Section 2107.003.~~]

26 (f) A [~~The~~] district attorney, county attorney, city
27 attorney, or private collection agency may collect and retain costs

1 associated with a [the] case referred to the attorney or agency in
2 accordance with procedures adopted under this section and 20
3 percent of the amount of the penalty, restitution, or other
4 reimbursement payment collected.

5 (b) Not later than December 1, 2003, the office of the
6 attorney general and the Health and Human Services Commission shall
7 amend the memorandum of understanding required by Section 531.103,
8 Government Code, as necessary to comply with that section, as
9 amended by this section.

10 SECTION 2.23. Section 531.104(b), Government Code, is
11 amended to read as follows:

12 (b) The memorandum of understanding must specify the type,
13 scope, and format of the investigative support provided to the
14 attorney general under this section [~~provide that the commission is~~
15 ~~not required to provide investigative support in more than 100 open~~
16 ~~investigations in a fiscal year~~].

17 SECTION 2.24. (a) Subchapter C, Chapter 531, Government
18 Code, is amended by adding Section 531.1063 to read as follows:

19 Sec. 531.1063. MEDICAID FRAUD PILOT PROGRAM. (a) The
20 commission, with cooperation from the Texas Department of Human
21 Services, shall develop and implement a front-end Medicaid fraud
22 reduction pilot program in one or more counties in this state to
23 address provider fraud and appropriate cases of third-party and
24 recipient fraud.

25 (b) The program must be designed to reduce:

26 (1) the number of fraud cases arising from
27 authentication fraud and abuse;

1 (2) the total amount of Medicaid expenditures; and

2 (3) the number of fraudulent participants.

3 (c) The program must include:

4 (1) participant smart cards and biometric readers that
5 reside at the point of contact with Medicaid providers, recipients,
6 participating pharmacies, hospitals, and appropriate third-party
7 participants;

8 (2) a secure finger-imaging system that is HIPPA
9 compliant and the use of any existing state database of fingerprint
10 images developed in connection with the financial assistance
11 program under Chapter 31, Human Resources Code; fingerprint images
12 collected as part of the program shall only be placed on the smart
13 card; and

14 (3) a monitoring system.

15 (d) To ensure reliability, the program and all associated
16 hardware and software must easily integrate into participant
17 settings and must be initially tested in a physician environment in
18 this state and determined to be successful in authenticating
19 recipients, providers, and provider staff members before the
20 program is implemented throughout the program area.

21 (e) The commission may extend the program to additional
22 counties if the commission determines that expansion would be
23 cost-effective.

24 (b) Not later than January 1, 2004, the Health and Human
25 Services Commission shall begin implementation of the program
26 required by Section 531.1063, Government Code, as added by this
27 section.

1 (c) Not later than February 1, 2005, the Health and Human
2 Services Commission shall report to the governor, the lieutenant
3 governor, and the speaker of the house of representatives regarding
4 the program required by Section 531.1063, Government Code, as added
5 by this section. The report must include:

6 (1) an identification and evaluation of the benefits
7 of the program; and

8 (2) recommendations regarding expanding the program
9 statewide.

10 SECTION 2.24A. Section 531.107(b), Government Code, is
11 amended to read as follows:

12 (b) The task force is composed of a representative of the:

13 (1) attorney general's office, appointed by the
14 attorney general;

15 (2) comptroller's office, appointed by the
16 comptroller;

17 (3) Department of Public Safety, appointed by the
18 public safety director;

19 (4) state auditor's office, appointed by the state
20 auditor;

21 (5) commission, appointed by the commissioner of
22 health and human services;

23 (6) Texas Department of Human Services, appointed by
24 the commissioner of human services; ~~and~~

25 (7) Texas Department of Insurance, appointed by the
26 commissioner of insurance; and

27 (8) Texas Department of Health, appointed by the

1 commissioner of public health.

2 SECTION 2.25. (a) Subchapter C, Chapter 531, Government
3 Code, is amended by adding Section 531.113 to read as follows:

4 Sec. 531.113. MANAGED CARE ORGANIZATIONS: SPECIAL
5 INVESTIGATIVE UNITS OR CONTRACTS. (a) Each managed care
6 organization that provides or arranges for the provision of health
7 care services to an individual under a government-funded program,
8 including the Medicaid program and the child health plan program,
9 shall:

10 (1) establish and maintain a special investigative
11 unit within the managed care organization to investigate fraudulent
12 claims and other types of program abuse by recipients and service
13 providers; or

14 (2) contract with another entity for the investigation
15 of fraudulent claims and other types of program abuse by recipients
16 and service providers.

17 (b) Each managed care organization subject to this section
18 shall adopt a plan to prevent and reduce fraud and abuse and
19 annually file that plan with the commission's office of inspector
20 general for approval. The plan must include:

21 (1) a description of the managed care organization's
22 procedures for detecting and investigating possible acts of fraud
23 or abuse;

24 (2) a description of the managed care organization's
25 procedures for the mandatory reporting of possible acts of fraud or
26 abuse to the commission's office of inspector general;

27 (3) a description of the managed care organization's

1 procedures for educating and training personnel to prevent fraud
2 and abuse;

3 (4) the name, address, telephone number, and fax
4 number of the individual responsible for carrying out the plan;

5 (5) a description or chart outlining the
6 organizational arrangement of the managed care organization's
7 personnel responsible for investigating and reporting possible
8 acts of fraud or abuse;

9 (6) a detailed description of the results of
10 investigations of fraud and abuse conducted by the managed care
11 organization's special investigative unit or the entity with which
12 the managed care organization contracts under Subsection (a)(2);
13 and

14 (7) provisions for maintaining the confidentiality of
15 any patient information relevant to an investigation of fraud or
16 abuse.

17 (c) If a managed care organization contracts for the
18 investigation of fraudulent claims and other types of program abuse
19 by recipients and service providers under Subsection (a)(2), the
20 managed care organization shall file with the commission's office
21 of inspector general:

22 (1) a copy of the written contract;

23 (2) the names, addresses, telephone numbers, and fax
24 numbers of the principals of the entity with which the managed care
25 organization has contracted; and

26 (3) a description of the qualifications of the
27 principals of the entity with which the managed care organization

1 has contracted.

2 (d) The commission's office of inspector general may review
3 the records of a managed care organization to determine compliance
4 with this section.

5 (e) The commissioner shall adopt rules as necessary to
6 accomplish the purposes of this section.

7 (b) A managed care organization subject to Section 531.113,
8 Government Code, as added by this section, shall comply with the
9 requirements of that section not later than September 1, 2004.

10 SECTION 2.26. (a) Subchapter C, Chapter 531, Government
11 Code, is amended by adding Section 531.114 to read as follows:

12 Sec. 531.114. FINANCIAL ASSISTANCE FRAUD. (a) For
13 purposes of establishing or maintaining the eligibility of a person
14 and the person's family for financial assistance under Chapter 31,
15 Human Resources Code, or for purposes of increasing or preventing a
16 reduction in the amount of that assistance, a person may not
17 intentionally:

18 (1) make a statement that the person knows is false or
19 misleading;

20 (2) misrepresent, conceal, or withhold a fact; or

21 (3) knowingly misrepresent a statement as being true.

22 (b) If after an investigation the commission determines
23 that a person violated Subsection (a), the commission shall:

24 (1) notify the person of the alleged violation not
25 later than the 30th day after the date the commission completes the
26 investigation and provide the person with an opportunity for a
27 hearing on the matter; or

1 (2) refer the matter to the appropriate prosecuting
2 attorney for prosecution.

3 (c) If a person waives the right to a hearing or if a hearing
4 officer at an administrative hearing held under this section
5 determines that a person violated Subsection (a), the person is
6 ineligible to receive financial assistance as provided by
7 Subsection (d). A person who a hearing officer determines violated
8 Subsection (a) may appeal that determination by filing a petition
9 in the district court in the county in which the violation occurred
10 not later than the 30th day after the date the hearing officer made
11 the determination.

12 (d) A person determined under Subsection (c) to have
13 violated Subsection (a) is not eligible for financial assistance:

14 (1) before the first anniversary of the date of that
15 determination, if the person has no previous violations; and

16 (2) permanently, if the person was previously
17 determined to have committed a violation.

18 (e) If a person is convicted of a state or federal offense
19 for conduct described by Subsection (a), or if the person is granted
20 deferred adjudication or placed on community supervision for that
21 conduct, the person is permanently disqualified from receiving
22 financial assistance.

23 (f) This section does not affect the eligibility for
24 financial assistance of any other member of the household of a
25 person ineligible as a result of Subsection (d) or (e).

26 (g) The commission shall adopt rules as necessary to
27 implement this section.

1 (b) Section 531.114, Government Code, as added by this
2 section, applies only to conduct occurring on or after the
3 effective date of this section. Conduct occurring before the
4 effective date of this section is governed by the law in effect on
5 the date the conduct occurred, and the former law is continued in
6 effect for that purpose.

7 SECTION 2.27. Subchapter C, Chapter 531, Government Code,
8 is amended by adding Section 531.115 to read as follows:

9 Sec. 531.115. FEDERAL FELONY MATCH. The commission shall
10 develop and implement a system to cross-reference data collected
11 for the programs listed under Section 531.008(c) with the list of
12 fugitive felons maintained by the federal government.

13 SECTION 2.28. Subchapter C, Chapter 531, Government Code,
14 is amended by adding Section 531.116 to read as follows:

15 Sec. 531.116. COMPLIANCE WITH LAW PROHIBITING
16 SOLICITATION. A provider who furnishes services under the Medicaid
17 program or child health plan program is subject to Chapter 102,
18 Occupations Code, and the provider's compliance with that chapter
19 is a condition of the provider's eligibility to participate as a
20 provider under those programs.

21 SECTION 2.29. Subchapter A, Chapter 533, Government Code,
22 is amended by adding Section 533.0025 to read as follows:

23 Sec. 533.0025. DELIVERY OF SERVICES. (a) In this section,
24 "medical assistance" has the meaning assigned by Section 32.003,
25 Human Resources Code.

26 (b) Except as otherwise provided by this section and
27 notwithstanding any other law, the commission shall provide medical

1 assistance for acute care through the most cost-effective model of
2 Medicaid managed care as determined by the commission. If the
3 commission determines that it is more cost-effective, the
4 commission may provide medical assistance for acute care in a
5 certain part of this state or to a certain population of recipients
6 using:

7 (1) a health maintenance organization model,
8 including the acute care portion of Medicaid Star + Plus pilot
9 programs;

10 (2) a primary care case management model;

11 (3) a prepaid health plan model;

12 (4) an exclusive provider organization model; or

13 (5) another Medicaid managed care model or
14 arrangement.

15 (c) In determining whether a model or arrangement described
16 by Subsection (b) is more cost-effective, the commissioner must
17 consider:

18 (1) the scope, duration, and types of health benefits
19 or services to be provided in a certain part of this state or to a
20 certain population of recipients;

21 (2) administrative costs necessary to meet federal and
22 state statutory and regulatory requirements;

23 (3) the anticipated effect of market competition
24 associated with the configuration of Medicaid service delivery
25 models determined by the commission; and

26 (4) the gain or loss to this state of a tax collected
27 under Article 4.11, Insurance Code.

1 (d) If the commission determines that it is not more
2 cost-effective to use a Medicaid managed care model to provide
3 certain types of medical assistance for acute care in a certain area
4 or to certain medical assistance recipients as prescribed by this
5 section, the commission shall provide medical assistance for acute
6 care through a traditional fee-for-service arrangement.

7 (e) Notwithstanding Subsection (b)(1), the commission may
8 not provide medical assistance using a health maintenance
9 organization model, including Medicaid Star + Plus pilot programs,
10 in Cameron County, Hidalgo County, Webb County, or Maverick County.

11 SECTION 2.30. Subchapter A, Chapter 533, Government Code,
12 is amended by adding Section 533.0132 to read as follows:

13 Sec. 533.0132. STATE TAXES. The commission shall ensure
14 that any experience rebate or profit sharing for managed care
15 organizations is calculated by treating premium, maintenance, and
16 other taxes under the Insurance Code and any other taxes payable to
17 this state as allowable expenses for purposes of determining the
18 amount of the experience rebate or profit sharing.

19 SECTION 2.31. Sections 403.105(a) and (c), Government Code,
20 are amended to read as follows:

21 (a) The permanent fund for health and tobacco education and
22 enforcement is a dedicated account in the general revenue fund. The
23 fund is composed of:

24 (1) money transferred to the fund at the direction of
25 the legislature;

26 (2) gifts and grants contributed to the fund; and

27 (3) the available earnings of the fund determined in

1 accordance with Section 403.1068.

2 (c) The available earnings of the fund may be appropriated
3 to the Texas Department of Health for:

4 (1) programs to reduce the use of cigarettes and
5 tobacco products in this state, including:

6 (A) [~~(1)~~] smoking cessation programs;

7 (B) [~~(2)~~] enforcement of Subchapters H, K, and N,
8 Chapter 161, Health and Safety Code, or other laws relating to
9 distribution of cigarettes or tobacco products to minors or use of
10 cigarettes or tobacco products by minors;

11 (C) [~~(3)~~] public awareness programs relating to
12 use of cigarettes and tobacco products, including general
13 educational programs and programs directed toward youth; and

14 (D) [~~(4)~~] specific programs for communities
15 traditionally targeted, by advertising and other means, by
16 companies that sell cigarettes or tobacco products; and

17 (2) the provision of coordinated essential public
18 health services administered by the department.

19 SECTION 2.32. The heading to Section 403.105, Government
20 Code, is amended to read as follows:

21 Sec. 403.105. PERMANENT FUND FOR HEALTH AND TOBACCO
22 EDUCATION AND ENFORCEMENT.

23 SECTION 2.33. Section 403.1055(c), Government Code, is
24 amended to read as follows:

25 (c) The available earnings of the fund may be appropriated
26 to:

27 (1) the Texas Department of Health for the purpose of:

1 (A) developing and demonstrating cost-effective
2 prevention and intervention strategies for improving health
3 outcomes for children and the public;

4 (B) [~~and~~ ~~for~~] providing grants to local
5 communities to address specific public health priorities,
6 including sickle cell anemia, diabetes, high blood pressure,
7 cancer, heart attack, stroke, keloid tissue and scarring, and
8 respiratory disease; ~~and~~

9 (C) [~~for~~] providing grants to local communities
10 for essential public health services as defined in the Health and
11 Safety Code; and

12 (2) the Interagency Council on Early Childhood
13 Intervention to provide intervention services for children with
14 developmental delay or who have a high probability of developing
15 developmental delay and the families of those children.

16 SECTION 2.34. (a) Effective September 1, 2003, Section
17 466.408(b), Government Code, is amended to read as follows:

18 (b) If a claim is not made for prize money on or before the
19 180th day after the date on which the winner was selected, the prize
20 money shall be used in the following order of priority:

21 (1) \$10 million in prize money each year shall be
22 deposited to the credit of the Texas Department of Health
23 state-owned multicategorical teaching hospital account, which is
24 an account in the general revenue fund;

25 (2) \$5 million in prize money each year shall be used
26 by the Health and Human Services Commission to support the
27 provision of inpatient hospital services in hospitals located in

1 the 15 counties that comprise the Texas-Mexico border area, with
2 payment for those services to be not less than the amount
3 established under the Tax Equity and Fiscal Responsibility Act of
4 1982 (TEFRA) cost reimbursement methodology for the hospital
5 providing the services;

6 (3) \$8 million in prize money each year shall be
7 deposited in the tertiary care facility account and may be
8 appropriated only for purposes specified in Chapter 46 or 61,
9 Health and Safety Code;

10 (4) an additional \$10 million in prize money each year
11 shall be deposited to the credit of the Texas Department of Health
12 state-owned multicategorical teaching hospital account; and

13 (5) in addition to the amount specified by Subdivision
14 (3), all remaining prize money subject to this section shall be
15 deposited in the tertiary care facility account and may be
16 appropriated only for purposes specified in Chapter 46 or 61,
17 Health and Safety Code [~~shall be deposited to the credit of the~~
18 ~~Texas Department of Health state-owned multicategorical teaching~~
19 ~~hospital account or the tertiary care facility account as follows:~~

20 [~~(1) not more than \$40 million in prize money each~~
21 ~~biennium may be deposited to or appropriated from the Texas~~
22 ~~Department of Health state-owned multicategorical teaching~~
23 ~~hospital account, which is an account in the general revenue fund,~~
24 ~~and~~

25 [~~(2) all prize money subject to this section in excess~~
26 ~~of \$40 million each biennium shall be deposited in the tertiary care~~
27 ~~facility account. Money deposited in the tertiary care facility~~

1 ~~account may only be appropriated to the department for purposes~~
2 ~~specified in Chapter 46 or 61, Health and Safety Code].~~

3 (b) Effective September 1, 2005, Section 466.408(b),
4 Government Code, is reenacted to read as follows:

5 (b) If a claim is not made for prize money on or before the
6 180th day after the date on which the winner was selected, the prize
7 money shall be deposited to the credit of the Texas Department of
8 Health state-owned multicategorical teaching hospital account or
9 the tertiary care facility account as follows:

10 (1) not more than \$40 million in prize money each
11 biennium may be deposited to or appropriated from the Texas
12 Department of Health state-owned multicategorical teaching
13 hospital account, which is an account in the general revenue fund;
14 and

15 (2) all prize money subject to this section in excess
16 of \$40 million each biennium shall be deposited in the tertiary care
17 facility account. Money deposited in the tertiary care facility
18 account may only be appropriated to the department for purposes
19 specified in Chapter 46 or 61, Health and Safety Code.

20 (c) It is the intent of the legislature that the Health and
21 Human Services Commission, to the extent possible, shall take all
22 action necessary to provide the highest level of possible financial
23 support to providing community care services and support for the
24 aging, as appropriate to reflect the legislature's priority for
25 those programs reflected in the General Appropriations Act.

26 SECTION 2.35. Section 533.005, Government Code, is amended
27 by adding Subdivision (11) to read as follows:

1 (11) A managed care organization shall pay an
2 out-of-network provider for emergency and all poststabilization
3 services at either:

4 (A) the Medicaid allowable rate for such services
5 as determined by the department in accordance with Sections 32.028
6 and 32.0281, Human Resources Code; or

7 (B) the highest contractual rate paid by the
8 managed care organization to an in-network provider.

9 SECTION 2.36. Section 533.012(a), Government Code, is
10 amended to read as follows:

11 (a) Each managed care organization contracting with the
12 commission under this chapter shall submit to the commission:

13 (1) a description of any financial or other business
14 relationship between the organization and any subcontractor
15 providing health care services under the contract;

16 (2) a copy of each type of contract between the
17 organization and a subcontractor relating to the delivery of or
18 payment for health care services; ~~and~~

19 (3) a description of the fraud control program used by
20 any subcontractor that delivers health care services; and

21 (4) a description and breakdown of all funds paid to
22 the managed care organization, including a health maintenance
23 organization, primary care case management, and an exclusive
24 provider organization, necessary for the commission to determine
25 the actual cost of administering the managed care plan.

26 SECTION 2.37. The heading to Subchapter C, Chapter 531,
27 Government Code, is amended to read as follows:

1 SUBCHAPTER C. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES

2 [~~WELFARE~~] FRAUD, ABUSE, OR OVERCHARGES

3 SECTION 2.37A. Subchapter C, Chapter 531, Government Code,
4 is amended by adding Section 531.1011 to read as follows:

5 Sec. 531.1011. DEFINITIONS. For purposes of this
6 subchapter:

7 (1) "Fraud" means an intentional deception or
8 misrepresentation made by a person with the knowledge that the
9 deception could result in some unauthorized benefit to that person
10 or some other person, including any act that constitutes fraud
11 under applicable federal or state law.

12 (2) "Hold on payment" means the temporary denial of
13 reimbursement under the Medicaid program for items or services
14 furnished by a specified provider.

15 (3) "Practitioner" means a physician or other
16 individual licensed under state law to practice the individual's
17 profession.

18 (4) "Program exclusion" means the suspension of a
19 provider from being authorized under the Medicaid program to
20 request reimbursement for items or services furnished by that
21 specific provider.

22 (5) "Provider" means a person, firm, partnership,
23 corporation, agency, association, institution, or other entity
24 that was or is approved by the commission to:

25 (A) provide medical assistance under contract or
26 provider agreement with the commission; or

27 (B) provide third-party billing vendor services

1 under a contract or provider agreement with the commission.

2 SECTION 2.38. (a) Subchapter B, Chapter 12, Health and
3 Safety Code, is amended by adding Sections 12.0111 and 12.0112 to
4 read as follows:

5 Sec. 12.0111. LICENSING FEES. (a) This section applies in
6 relation to each licensing program administered by the department
7 or administered by a regulatory board or other agency that is under
8 the jurisdiction of the department or administratively attached to
9 the department. In this section and Section 12.0112, "license"
10 includes a permit, certificate, or registration.

11 (b) Notwithstanding other law, the department shall charge
12 a fee for issuing or renewing a license that is in an amount
13 designed to allow the department to recover from its license
14 holders all of the department's direct and indirect costs in
15 administering and enforcing the applicable licensing program.

16 (c) Notwithstanding other law, each regulatory board or
17 other agency that is under the jurisdiction of the department or
18 administratively attached to the department and that issues
19 licenses shall charge a fee for issuing or renewing a license that
20 is in an amount designed to allow the department and the regulatory
21 board or agency to recover from the license holders all of the
22 direct and indirect costs to the department and to the regulatory
23 board or agency in administering and enforcing the applicable
24 licensing program.

25 (d) If H.B. 1930 or S.B. 1556, Acts of the 78th Legislature,
26 Regular Session, 2003, is enacted and becomes law, this section
27 does not apply to a person regulated under Chapter 773.

1 Sec. 12.0112. TERM OF LICENSE. Notwithstanding other law,
2 the term of each license issued by the department, or by a
3 regulatory board or other agency that is under the jurisdiction of
4 the department or administratively attached to the department, is
5 two years.

6 (b) Section 12.0111, Health and Safety Code, as added by
7 this section, applies only to a license, permit, certificate, or
8 registration issued or renewed by the Texas Department of Health,
9 or by a regulatory board or other agency that is under the
10 jurisdiction of the department or administratively attached to the
11 department, on or after January 1, 2004.

12 (c) Section 12.0112, Health and Safety Code, as added by
13 this section, applies only to a license, permit, certificate, or
14 registration that is issued or renewed on or after January 1, 2005.

15 SECTION 2.39. Sections 62.055(a), (d), and (e), Health and
16 Safety Code, are amended to read as follows:

17 (a) It is the intent of the legislature that the commission
18 maximize the use of private resources in administering the child
19 health plan created under this chapter. In administering the child
20 health plan, the commission may contract with[+]

21 [~~1~~] a third party administrator to provide
22 enrollment and related services under the state child health plan[+]
23 ~~or~~

24 [~~2~~] ~~another entity, including the Texas Healthy Kids~~
25 ~~Corporation under Subchapter F, Chapter 109, to obtain health~~
26 ~~benefit plan coverage for children who are eligible for coverage~~
27 ~~under the state child health plan].~~

1 (d) A third party administrator [~~or other entity~~] may
2 perform tasks under the contract that would otherwise be performed
3 by the Texas Department of Health or Texas Department of Human
4 Services under this chapter.

5 (e) The commission shall:

6 (1) retain all policymaking authority over the state
7 child health plan;

8 (2) procure all contracts with a third party
9 administrator [~~or other entity~~] through a competitive procurement
10 process in compliance with all applicable federal and state laws or
11 regulations; and

12 (3) ensure that all contracts with child health plan
13 providers under Section 62.155 are procured through a competitive
14 procurement process in compliance with all applicable federal and
15 state laws or regulations.

16 SECTION 2.40. (a) Subchapter B, Chapter 62, Health and
17 Safety Code, is amended by adding Section 62.0582 to read as
18 follows:

19 Sec. 62.0582. THIRD-PARTY BILLING VENDORS. (a) A
20 third-party billing vendor may not submit a claim with the
21 commission for payment on behalf of a health plan provider under the
22 program unless the vendor has entered into a contract with the
23 commission authorizing that activity.

24 (b) To the extent practical, the contract shall contain
25 provisions comparable to the provisions contained in contracts
26 between the commission and health plan providers, with an emphasis
27 on provisions designed to prevent fraud or abuse under the program.

1 At a minimum, the contract must require the third-party billing
2 vendor to:

3 (1) provide documentation of the vendor's authority to
4 bill on behalf of each provider for whom the vendor submits claims;

5 (2) submit a claim in a manner that permits the
6 commission to identify and verify the vendor, any computer or
7 telephone line used in submitting the claim, any relevant user
8 password used in submitting the claim, and any provider number
9 referenced in the claim; and

10 (3) subject to any confidentiality requirements
11 imposed by federal law, provide the commission, the office of the
12 attorney general, or authorized representatives with:

13 (A) access to any records maintained by the
14 vendor, including original records and records maintained by the
15 vendor on behalf of a provider, relevant to an audit or
16 investigation of the vendor's services or another function of the
17 commission or office of attorney general relating to the vendor;
18 and

19 (B) if requested, copies of any records described
20 by Paragraph (A) at no charge to the commission, the office of the
21 attorney general, or authorized representatives.

22 (c) On receipt of a claim submitted by a third-party billing
23 vendor, the commission shall send a remittance notice directly to
24 the provider referenced in the claim. The notice must:

25 (1) include detailed information regarding the claim
26 submitted on behalf of the provider; and

27 (2) require the provider to review the claim for

1 accuracy and notify the commission promptly regarding any errors.

2 (d) The commission shall take all action necessary,
3 including any modifications of the commission's claims processing
4 system, to enable the commission to identify and verify a
5 third-party billing vendor submitting a claim for payment under the
6 program, including identification and verification of any computer
7 or telephone line used in submitting the claim, any relevant user
8 password used in submitting the claim, and any provider number
9 referenced in the claim.

10 (e) The commission shall audit each third-party billing
11 vendor subject to this section at least annually to prevent fraud
12 and abuse under the program.

13 (b) Section 62.0582, Health and Safety Code, as added by
14 this section, takes effect January 1, 2004.

15 SECTION 2.41. Section 62.002(4), Health and Safety Code, is
16 amended to read as follows:

17 (4) "Net family income" means the amount of income
18 established for a family after reduction for offsets, not to exceed
19 5 percent of the amount of net family income, for expenses such as
20 child care and work-related expenses [~~, in accordance with standards~~
21 ~~applicable under the Medicaid program]~~.

22 SECTION 2.42. Sections 62.101(b) and (c), Health and Safety
23 Code, are amended to read as follows:

24 (b) Unless different income eligibility levels are
25 prescribed by the General Appropriations Act, the [The] commission
26 shall establish income eligibility levels consistent with Title
27 XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as

1 amended, and any other applicable law or regulations, and subject
2 to the availability of appropriated money, so that a child who is
3 younger than 19 years of age and whose net family income is at or
4 below 165 [~~200~~] percent of the federal poverty level is eligible for
5 health benefits coverage under the program.

6 (c) The commissioner shall evaluate enrollment levels and
7 program impact every six months during the first 12 months of
8 implementation and at least annually thereafter and shall submit a
9 finding of fact to the Legislative Budget Board and the Governor's
10 Office of Budget and Planning as to the adequacy of funding and the
11 ability of the program to sustain enrollment at the eligibility
12 level established by Subsection (b). In the event that
13 appropriated money is insufficient to sustain enrollment at the
14 authorized eligibility level or enrollment exceeds the number of
15 children authorized to be enrolled in the child health plan under
16 the General Appropriations Act, the commissioner shall:

17 (1) suspend enrollment in the child health plan;

18 (2) establish a waiting list for applicants for
19 coverage; and

20 (3) establish a process for periodic or continued
21 enrollment of applicants in the child health plan program as the
22 availability of money allows.

23 SECTION 2.43. Section 62.1015(b), Health and Safety Code,
24 is amended to read as follows:

25 (b) A child of an employee of a charter school, school
26 district, other educational district whose employees are members of
27 the Teacher Retirement System of Texas, or regional education

1 service center may be enrolled in health benefits coverage under
2 the child health plan. A child enrolled in the child health plan
3 under this section:

4 (1) participates in the same manner as any other child
5 enrolled in the child health plan; and

6 (2) is subject to the same requirements and
7 restrictions relating to income eligibility, continuous coverage,
8 and enrollment, including applicable waiting periods, as any other
9 child enrolled in the child health plan.

10 SECTION 2.44. Section 62.102, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 62.102. CONTINUOUS COVERAGE. The commission shall
13 provide that an individual who is determined to be eligible for
14 coverage under the child health plan remains eligible for those
15 benefits until the earlier of:

16 (1) the end of a period, not to exceed 180 days [~~12~~
17 ~~months~~], following the date of the eligibility determination; or

18 (2) the individual's 19th birthday.

19 SECTION 2.45. Section 62.151, Health and Safety Code, is
20 amended by amending Subsection (b) and adding Subsections (e) and
21 (f) to read as follows:

22 (b) In developing the covered benefits, the commission
23 shall consider the health care needs of healthy children and
24 children with special health care needs. At the time the child
25 health plan program is first implemented, the child health plan
26 must provide a benefits package that is actuarially equivalent, as
27 determined in accordance with 42 U.S.C. Section 1397cc, to the

1 basic plan for active state employees offered through health
2 maintenance organizations under Chapter 1551, Insurance Code [~~the~~
3 ~~Texas Employees Uniform Group Insurance Benefits Act (Article~~
4 ~~3.50-2, Vernon's Texas Insurance Code)~~], as determined by the
5 commission. [~~The child health plan must provide at least the~~
6 ~~covered benefits described by the recommended benefits package~~
7 ~~described for a state-designed child health plan by the Texas House~~
8 ~~of Representatives Committee on Public Health "CHIP" Interim Report~~
9 ~~to the Seventy-Sixth Texas Legislature dated December, 1998, and~~
10 ~~the Senate Interim Committee on Children's Health Insurance Report~~
11 ~~to the Seventy-Sixth Texas Legislature dated December 1, 1998.~~]

12 (e) In developing the covered benefits, the commission
13 shall seek input from the Public Assistance Health Benefit Review
14 and Design Committee established under Section 531.067, Government
15 Code.

16 (f) The commission, if it determines the policy to be
17 cost-effective, may ensure that an enrolled child does not, unless
18 authorized by the commission in consultation with the child's
19 attending physician or advanced practice nurse, receive under the
20 child health plan:

21 (1) more than four different outpatient brand-name
22 prescription drugs during a month; or

23 (2) more than a 34-day supply of a brand-name
24 prescription drug at any one time.

25 SECTION 2.46. Section 62.153, Health and Safety Code, is
26 amended by amending Subsection (b) and adding Subsection (d) to
27 read as follows:

1 (b) Subject to Subsection (d), cost-sharing [~~Cost-sharing~~]
2 provisions adopted under this section shall ensure that families
3 with higher levels of income are required to pay progressively
4 higher percentages of the cost of the plan.

5 (d) Cost-sharing provisions adopted under this section may
6 be determined based on the maximum level authorized under federal
7 law and applied to income levels in a manner that minimizes
8 administrative costs.

9 SECTION 2.47. (a) The heading to Section 62.154, Health and
10 Safety Code, is amended to read as follows:

11 Sec. 62.154. WAITING PERIOD; CROWD OUT.

12 (b) Sections 62.154(a), (b), and (d), Health and Safety
13 Code, are amended to read as follows:

14 (a) To the extent permitted under Title XXI of the Social
15 Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any
16 other applicable law or regulations, the child health plan must
17 include a waiting period. The child health plan [~~and~~] may include
18 copayments and other provisions intended to discourage:

19 (1) employers and other persons from electing to
20 discontinue offering coverage for children under employee or other
21 group health benefit plans; and

22 (2) individuals with access to adequate health benefit
23 plan coverage, other than coverage under the child health plan,
24 from electing not to obtain or to discontinue that coverage for a
25 child.

26 (b) A child is not subject to a waiting period adopted under
27 Subsection (a) if:

1 (1) the family lost coverage for the child as a result
2 of:

3 (A) termination of employment because of a layoff
4 or business closing;

5 (B) termination of continuation coverage under
6 the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L.
7 No. 99-272);

8 (C) change in marital status of a parent of the
9 child;

10 (D) termination of the child's Medicaid
11 eligibility because:

12 (i) the child's family's earnings or
13 resources increased; or

14 (ii) the child reached an age at which
15 Medicaid coverage is not available; or

16 (E) a similar circumstance resulting in the
17 involuntary loss of coverage;

18 (2) the family terminated health benefits plan
19 coverage for the child because the cost to the child's family for
20 the coverage exceeded 10 percent of the family's net income; [~~or~~]

21 (3) the child has access to group-based health
22 benefits plan coverage and is required to participate in the health
23 insurance premium payment reimbursement program administered by
24 the commission; or

25 (4) the commission has determined that other grounds
26 exist for a good cause exception.

27 (d) The waiting period required by Subsection (a) must[+]

1 ~~[(1)]~~ extend for a period of 90 days after the ~~[last]~~
2 date on which the applicant is enrolled under the child health plan
3 ~~[was covered under a health benefits plan; and~~

4 ~~[(2)]~~ ~~apply to a child who was covered by a health~~
5 ~~benefits plan at any time during the 90 days before the date of~~
6 ~~application for coverage under the child health plan, other than a~~
7 ~~child who was covered under a health benefits plan provided under~~
8 ~~Chapter 109].~~

9 SECTION 2.48. Sections 62.155(c) and (d), Health and Safety
10 Code, are amended to read as follows:

11 (c) In selecting a health plan provider, the commission:

12 (1) may give preference to a person who provides
13 similar coverage under the Medicaid program ~~[or through the Texas~~
14 ~~Healthy Kids Corporation]~~; and

15 (2) shall provide for a choice of not more than ~~[at~~
16 ~~least]~~ two health plan providers in each service ~~[metropolitan]~~
17 area.

18 (d) The commissioner may authorize an exception to
19 Subsection (c)(2) if it is cost-effective to do so and there are
20 more than two ~~[is only one]~~ acceptable applicants ~~[applicant]~~ to
21 become ~~[a]~~ health plan providers ~~[provider]~~ in the service
22 ~~[metropolitan]~~ area.

23 SECTION 2.49. Subchapter D, Chapter 62, Health and Safety
24 Code, is amended by adding Section 62.158 to read as follows:

25 Sec. 62.158. STATE TAXES. The commission shall ensure that
26 any experience rebate or profit-sharing for health plan providers
27 under the child health plan is calculated by treating premium,

1 maintenance, and other taxes under the Insurance Code and any other
2 taxes payable to this state as allowable expenses for purposes of
3 determining the amount of the experience rebate or profit-sharing.

4 SECTION 2.50. Section 142.003(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) The following persons need not be licensed under this
7 chapter:

8 (1) a physician, dentist, registered nurse,
9 occupational therapist, or physical therapist licensed under the
10 laws of this state who provides home health services to a client
11 only as a part of and incidental to that person's private office
12 practice;

13 (2) a registered nurse, licensed vocational nurse,
14 physical therapist, occupational therapist, speech therapist,
15 medical social worker, or any other health care professional as
16 determined by the department who provides home health services as a
17 sole practitioner;

18 (3) a registry that operates solely as a clearinghouse
19 to put consumers in contact with persons who provide home health,
20 hospice, or personal assistance services and that does not maintain
21 official client records, direct client services, or compensate the
22 person who is providing the service;

23 (4) an individual whose permanent residence is in the
24 client's residence;

25 (5) an employee of a person licensed under this
26 chapter who provides home health, hospice, or personal assistance
27 services only as an employee of the license holder and who receives

1 no benefit for providing the services, other than wages from the
2 license holder;

3 (6) a home, nursing home, convalescent home, assisted
4 living facility, special care facility, or other institution for
5 individuals who are elderly or who have disabilities that provides
6 home health or personal assistance services only to residents of
7 the home or institution;

8 (7) a person who provides one health service through a
9 contract with a person licensed under this chapter;

10 (8) a durable medical equipment supply company;

11 (9) a pharmacy or wholesale medical supply company
12 that does not furnish services, other than supplies, to a person at
13 the person's house;

14 (10) a hospital or other licensed health care facility
15 that provides home health or personal assistance services only to
16 inpatient residents of the hospital or facility;

17 (11) a person providing home health or personal
18 assistance services to an injured employee under Title 5, Labor
19 Code;

20 (12) a visiting nurse service that:

21 (A) is conducted by and for the adherents of a
22 well-recognized church or religious denomination; and

23 (B) provides nursing services by a person exempt
24 from licensing by Section 301.004, Occupations Code, because the
25 person furnishes nursing care in which treatment is only by prayer
26 or spiritual means;

27 (13) an individual hired and paid directly by the

1 client or the client's family or legal guardian to provide home
2 health or personal assistance services;

3 (14) a business, school, camp, or other organization
4 that provides home health or personal assistance services,
5 incidental to the organization's primary purpose, to individuals
6 employed by or participating in programs offered by the business,
7 school, or camp that enable the individual to participate fully in
8 the business's, school's, or camp's programs;

9 (15) a person or organization providing
10 sitter-companion services or chore or household services that do
11 not involve personal care, health, or health-related services;

12 (16) a licensed health care facility that provides
13 hospice services under a contract with a hospice;

14 (17) a person delivering residential acquired immune
15 deficiency syndrome hospice care who is licensed and designated as
16 a residential AIDS hospice under Chapter 248; ~~[or]~~

17 (18) the Texas Department of Criminal Justice; or

18 (19) a person that provides services under a home and
19 community-based services waiver program for persons with mental
20 retardation adopted in accordance with Section 1915(c) of the
21 federal Social Security Act (42 U.S.C. Section 1396n), as amended,
22 and that is funded wholly or partly by the Texas Department of
23 Mental Health and Mental Retardation and monitored by that
24 department or by a designated local authority in accordance with
25 standards adopted by that department.

26 SECTION 2.51. Section 142.009(j), Health and Safety Code,
27 is amended to read as follows:

1 (j) Except as provided by Subsections (h) [~~7~~, ~~(i)~~,] and (l),
2 an on-site survey must be conducted within 18 months after a survey
3 for an initial license. After that time, an on-site survey must be
4 conducted at least every 36 months.

5 SECTION 2.52. (a) Section 242.047, Health and Safety Code,
6 is amended to read as follows:

7 Sec. 242.047. ACCREDITATION REVIEW TO SATISFY [~~INSTEAD OF~~]
8 INSPECTION OR CERTIFICATION REQUIREMENTS. (a) The department
9 shall accept an annual accreditation review from the Joint
10 Commission on Accreditation of Health Organizations for a nursing
11 home instead of an inspection for renewal of a license under Section
12 242.033 and in satisfaction of the requirements for certification
13 by the department for participation in the medical assistance
14 program under Chapter 32, Human Resources Code, and the federal
15 Medicare program, but only if:

16 (1) the nursing home is accredited by the commission
17 under the commission's long-term care standards;

18 (2) the commission maintains an annual inspection or
19 review program that, for each nursing home, meets the department's
20 applicable minimum standards as confirmed by the board;

21 (3) the commission conducts an annual on-site
22 inspection or review of the home; [~~and~~]

23 (4) the nursing home submits to the department a copy
24 of its annual accreditation review from the commission in addition
25 to the application, fee, and any report required for renewal of a
26 license or for certification, as applicable; and

27 (5) the department has:

1 (A) determined whether a waiver or authorization
2 from a federal agency is necessary under federal law, including for
3 federal funding purposes, before the department accepts an annual
4 accreditation review from the joint commission:

5 (i) instead of an inspection for license
6 renewal purposes;

7 (ii) as satisfying the requirements for
8 certification by the department for participation in the medical
9 assistance program; or

10 (iii) as satisfying the requirements for
11 certification by the department for participation in the federal
12 Medicare program; and

13 (B) obtained any necessary federal waivers or
14 authorizations.

15 (b) The department shall coordinate its licensing and
16 certification activities with the commission.

17 (c) The department and the commission shall sign a
18 memorandum of agreement to implement this section. The memorandum
19 must provide that if all parties to the memorandum do not agree in
20 the development, interpretation, and implementation of the
21 memorandum, any area of dispute is to be resolved by the board.

22 (d) Except as specifically provided by this section, this
23 [This] section does not limit the department in performing any
24 duties and inspections authorized by this chapter or under any
25 contract relating to the medical assistance program under Chapter
26 32, Human Resources Code, and Titles XVIII and XIX of the Social
27 Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.),

1 including authority to take appropriate action relating to an
2 institution, such as closing the institution.

3 (e) This section does not require a nursing home to obtain
4 accreditation from the commission.

5 (b) Not later than October 1, 2003, the Texas Department of
6 Human Services shall:

7 (1) determine whether a waiver or authorization from a
8 federal agency is necessary under federal law, including for
9 federal funding purposes, before the department may accept an
10 annual accreditation review from the Joint Commission on
11 Accreditation of Health Organizations for a nursing home:

12 (A) instead of an inspection for purposes of
13 renewing a nursing home license under Chapter 242, Health and
14 Safety Code;

15 (B) as satisfying the requirements for
16 certification by the department for participation in the medical
17 assistance program under Chapter 32, Human Resources Code; and

18 (C) as satisfying the requirements for
19 certification by the department for participation in the federal
20 Medicare program; and

21 (2) if the department determines that a waiver or
22 authorization is necessary, request any required waivers or
23 authorizations that the department may possibly obtain under
24 federal law.

25 (c) Not later than December 1, 2003, the Texas Department of
26 Human Services shall report its progress under Subsection (b) of
27 this section to the governor and to the presiding officer of each

1 house of the legislature.

2 SECTION 2.53. (a) Section 242.063(d), Health and Safety
3 Code, is amended to read as follows:

4 (d) A [~~Notwithstanding Chapter 15, Civil Practice and~~
5 ~~Remedies Code, or Section 65.023, Civil Practice and Remedies Code,~~
6 a] suit for a temporary restraining order or other injunctive
7 relief must [~~may~~] be brought in [~~Travis County or in~~] the county in
8 which the alleged violation occurs.

9 (b) Section 242.063(e), Health and Safety Code, is
10 repealed.

11 (c) The changes in law made by this section to Section
12 242.063(d), Health and Safety Code, apply only to a suit filed on or
13 after the effective date of this section. A suit filed before the
14 effective date of this section is covered by the law in effect when
15 the suit was filed, and that law is continued in effect for that
16 purpose.

17 SECTION 2.54. Section 242.065(b), Health and Safety Code,
18 is amended to read as follows:

19 (b) In determining the amount of a penalty to be awarded
20 under this section, the trier of fact shall consider:

21 (1) the seriousness of the violation[~~, including the~~
22 ~~nature, circumstances, extent, and gravity of the violation and the~~
23 ~~hazard or potential hazard created by the violation to the health or~~
24 ~~safety of a resident)];~~

25 (2) the history of violations committed by the person
26 or the person's affiliate, employee, or controlling person;

27 (3) the amount necessary to deter future violations;

1 (4) the efforts made to correct the violation;

2 (5) any misrepresentation made to the department or to
3 another person regarding:

4 (A) the quality of services rendered or to be
5 rendered to residents;

6 (B) the compliance history of the institution or
7 any institutions owned or controlled by an owner or controlling
8 person of the institution; or

9 (C) the identity of an owner or controlling
10 person of the institution;

11 (6) the culpability of the individual who committed
12 the violation; and

13 (7) any other matter that should, as a matter of
14 justice or equity, be considered.

15 SECTION 2.55. (a) Section 242.070, Health and Safety Code,
16 is amended to read as follows:

17 Sec. 242.070. APPLICATION OF OTHER LAW. The department may
18 not assess more than one monetary penalty under this chapter and
19 Chapter 32, Human Resources Code, for a violation arising out of the
20 same act or failure to act, except as provided by Section
21 242.0665(c). The [~~This section does not prohibit the~~] department
22 may assess the greater of [~~from assessing~~] a monetary penalty under
23 this chapter or [~~and~~] a monetary penalty under Chapter 32, Human
24 Resources Code, for the same act or failure to act.

25 (b) The change in law made by this section to Section
26 242.070, Health and Safety Code, applies only to a penalty assessed
27 on or after the effective date of this section.

1 SECTION 2.56. Section 242.601(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) An institution must establish medication administration
4 procedures ~~[to ensure that:~~

5 ~~[(1) medications to be administered are checked~~
6 ~~against the order of a physician, advanced practice nurse, or~~
7 ~~physician assistant pursuant to protocols jointly developed with a~~
8 ~~physician;~~

9 ~~[(2) the resident is identified before the~~
10 ~~administration of a medication;~~

11 ~~[(3) each resident's clinical record includes an~~
12 ~~individual medication record in which the dose of medication~~
13 ~~administered is properly recorded by the person who administered~~
14 ~~the medication;~~

15 ~~[(4) medications and biologicals are prepared and~~
16 ~~administered to a resident by the same individual, except under~~
17 ~~unit-of-use package distribution systems; and~~

18 ~~[(5) a medication prescribed for one resident is not~~
19 ~~administered to any other person].~~

20 SECTION 2.57. Section 242.603(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) An institution shall store medications under
23 appropriate conditions of sanitation, temperature, light,
24 moisture, ventilation, segregation, and security. ~~[Poisons,~~
25 ~~medications used externally, and medications taken internally~~
26 ~~shall be stored on separate shelves or in separate cabinets.~~
27 ~~Medication stored in a refrigerator containing other items shall be~~

1 ~~kept in a separate compartment with appropriate security. The~~
2 ~~institution shall store a medication in a locked area that must~~
3 ~~remain locked unless an individual authorized to distribute the~~
4 ~~medication is present.]~~

5 SECTION 2.58. (a) Section 245.004(a), Health and Safety
6 Code, is amended to read as follows:

7 (a) The following facilities need not be licensed under this
8 chapter:

9 (1) a hospital licensed under Chapter 241 (Texas
10 Hospital Licensing Law); or

11 (2) the office of a physician licensed under Subtitle
12 B, Title 3, Occupations Code, unless the office is used for the
13 purpose of performing more than 50 ~~[300]~~ abortions in any 12-month
14 period.

15 (b) An office of a physician required by Section 245.004(a),
16 Health and Safety Code, as amended by this section, to be licensed
17 under Chapter 245, Health and Safety Code, must obtain that license
18 not later than January 1, 2004.

19 SECTION 2.59. (a) Section 252.202(a), Health and Safety
20 Code, is amended to read as follows:

21 (a) A quality assurance fee is imposed on each facility for
22 which a license fee must be paid under Section 252.034, ~~[and]~~
23 each facility owned by a community mental health and mental
24 retardation center, as described by Subchapter A, Chapter 534, and
25 on each facility owned by the Texas Department of Mental Health and
26 Mental Retardation. The fee:

27 (1) is an amount established under Subsection (b)

1 multiplied by the number of patient days as determined in
2 accordance with Section 252.203;

3 (2) is payable monthly; and

4 (3) is in addition to other fees imposed under this
5 chapter.

6 (b) Not later than January 1, 2004, each facility owned by
7 the Texas Department of Mental Health and Mental Retardation shall
8 pay the quality assurance fee imposed by Section 252.202, Health
9 and Safety Code, as amended by this section, for patient days
10 occurring between September 1, 2002, and July 31, 2003.

11 SECTION 2.60. Section 252.203, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 252.203. PATIENT DAYS. For each calendar day, a
14 facility shall determine the number of patient days by adding the
15 following:

16 (1) the number of patients occupying a facility bed
17 immediately before midnight of that day; and

18 ~~(2) [the number of beds that are on hold on that day~~
19 ~~and that have been placed on hold for a period not to exceed three~~
20 ~~consecutive calendar days during which a patient is in a hospital,~~
21 ~~and~~

22 ~~[(3)]~~ the number of beds that are on hold on that day
23 and that have been placed on hold for a period not to exceed three
24 consecutive calendar days during which a patient is on therapeutic
25 ~~[home]~~ leave.

26 SECTION 2.61. Section 252.204(b), Health and Safety Code,
27 is amended to read as follows:

1 (b) Each facility shall:

2 (1) not later than the 20th [~~10th~~] day after the last
3 day of a month file a report with the Health and Human Services
4 Commission or the department, as appropriate, stating the total
5 patient days for the month; and

6 (2) not later than the 30th day after the last day of
7 the month pay the quality assurance fee.

8 SECTION 2.62. Sections 252.207(a) and (c), Health and
9 Safety Code, are amended to read as follows:

10 (a) Subject to legislative appropriation and state and
11 federal law, the [~~The~~] Health and Human Services Commission may
12 [~~shall~~] use money in the quality assurance fund, together with any
13 federal money available to match that money[~~, to~~]:

14 (1) to offset [~~allowable~~] expenses incurred to
15 administer the quality assurance fee under this chapter [~~under the~~
16 ~~Medicaid program~~]; [~~or~~]

17 (2) to increase reimbursement rates paid under the
18 Medicaid program to facilities or waiver programs for persons with
19 mental retardation operated in accordance with 42 U.S.C. Section
20 1396n(c) and its subsequent amendments; or

21 (3) for any other health and human services purpose
22 approved by the governor and Legislative Budget Board[~~, subject to~~
23 ~~Section 252.206(d)~~].

24 (c) If money in the quality assurance fund is used to
25 increase a reimbursement rate in the Medicaid program, the [~~The~~]
26 Health and Human Services Commission shall ensure that the
27 reimbursement methodology used to set that rate describes how the

1 money in the fund will be used to increase the rate and [~~formula~~
2 ~~devised under Subsection (b)] provides incentives to increase
3 direct care staffing and direct care wages and benefits.~~

4 SECTION 2.63. Section 253.008, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 253.008. VERIFICATION OF EMPLOYABILITY. (a) Before a
7 facility, [~~or~~] an agency licensed under Chapter 142, or a person
8 exempt from licensing under Section 142.003(a)(19) may hire an
9 employee, the facility, [~~or~~] agency, or person shall search the
10 employee misconduct registry under this chapter and the nurse aide
11 registry maintained under the Omnibus Budget Reconciliation Act of
12 1987 (Pub. L. No. 100-203) to determine whether the applicant for
13 employment [~~person~~] is designated in either registry as having
14 abused, neglected, or exploited a resident or consumer of a
15 facility or an individual receiving services from an agency
16 licensed under Chapter 142 or from a person exempt from licensing
17 under Section 142.003(a)(19).

18 (b) A facility, [~~or~~] agency licensed under Chapter 142, or a
19 person exempt from licensing under Section 142.003(a)(19) may not
20 employ a person who is listed in either registry as having abused,
21 neglected, or exploited a resident or consumer of a facility or an
22 individual receiving services from an agency licensed under Chapter
23 142 or from a person exempt from licensing under Section
24 142.003(a)(19).

25 SECTION 2.64. Section 253.009(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) Each facility, [~~or~~] each agency licensed under Chapter

1 142, and each person exempt from licensing under Section
2 142.003(a)(19) shall notify its employees in a manner prescribed by
3 the department:

4 (1) about the employee misconduct registry; and

5 (2) that an employee may not be employed if the
6 employee is listed in the registry.

7 SECTION 2.65. (a) Chapter 285, Health and Safety Code, is
8 amended by adding Subchapter M to read as follows:

9 SUBCHAPTER M. PROVISION OF SERVICES

10 Sec. 285.201. PROVISION OF MEDICAL AND HOSPITAL CARE. As
11 authorized by 8 U.S.C. Section 1621(d), this chapter affirmatively
12 establishes eligibility for a person who would otherwise be
13 ineligible under 8 U.S.C. Section 1621(a), provided that only local
14 funds are utilized for the provision of nonemergency public health
15 benefits. A person is not considered a resident of a governmental
16 entity or hospital district if the person attempted to establish
17 residence solely to obtain health care assistance.

18 (b) This section takes effect immediately if this Act
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this section takes effect September 1, 2003.

23 SECTION 2.66. Section 431.021, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 431.021. PROHIBITED ACTS. The following acts and the
26 causing of the following acts within this state are unlawful and
27 prohibited:

1 (a) the introduction or delivery for introduction into
2 commerce of any food, drug, device, or cosmetic that is adulterated
3 or misbranded;

4 (b) the adulteration or misbranding of any food, drug,
5 device, or cosmetic in commerce;

6 (c) the receipt in commerce of any food, drug, device, or
7 cosmetic that is adulterated or misbranded, and the delivery or
8 proffered delivery thereof for pay or otherwise;

9 (d) the distribution in commerce of a consumer commodity, if
10 such commodity is contained in a package, or if there is affixed to
11 that commodity a label that does not conform to the provisions of
12 this chapter and of rules adopted under the authority of this
13 chapter; provided, however, that this prohibition shall not apply
14 to persons engaged in business as wholesale or retail distributors
15 of consumer commodities except to the extent that such persons:

16 (1) are engaged in the packaging or labeling of such
17 commodities; or

18 (2) prescribe or specify by any means the manner in
19 which such commodities are packaged or labeled;

20 (e) the introduction or delivery for introduction into
21 commerce of any article in violation of Section 431.084, 431.114,
22 or 431.115;

23 (f) the dissemination of any false advertisement;

24 (g) the refusal to permit entry or inspection, or to permit
25 the taking of a sample or to permit access to or copying of any
26 record as authorized by Sections 431.042-431.044; or the failure to
27 establish or maintain any record or make any report required under

1 Section 512(j), (l), or (m) of the federal Act, or the refusal to
2 permit access to or verification or copying of any such required
3 record;

4 (h) the manufacture within this state of any food, drug,
5 device, or cosmetic that is adulterated or misbranded;

6 (i) the giving of a guaranty or undertaking referred to in
7 Section 431.059, which guaranty or undertaking is false, except by
8 a person who relied on a guaranty or undertaking to the same effect
9 signed by, and containing the name and address of the person
10 residing in this state from whom the person received in good faith
11 the food, drug, device, or cosmetic; or the giving of a guaranty or
12 undertaking referred to in Section 431.059, which guaranty or
13 undertaking is false;

14 (j) the use, removal, or disposal of a detained or embargoed
15 article in violation of Section 431.048;

16 (k) the alteration, mutilation, destruction, obliteration,
17 or removal of the whole or any part of the labeling of, or the doing
18 of any other act with respect to a food, drug, device, or cosmetic,
19 if such act is done while such article is held for sale after
20 shipment in commerce and results in such article being adulterated
21 or misbranded;

22 (l)(1) forging, counterfeiting, simulating, or falsely
23 representing, or without proper authority using any mark, stamp,
24 tag, label, or other identification device authorized or required
25 by rules adopted under this chapter or the regulations promulgated
26 under the provisions of the federal Act;

27 (2) making, selling, disposing of, or keeping in

1 possession, control, or custody, or concealing any punch, die,
2 plate, stone, or other thing designed to print, imprint, or
3 reproduce the trademark, trade name, or other identifying mark,
4 imprint, or device of another or any likeness of any of the
5 foregoing on any drug or container or labeling thereof so as to
6 render such drug a counterfeit drug;

7 (3) the doing of any act that causes a drug to be a
8 counterfeit drug, or the sale or dispensing, or the holding for sale
9 or dispensing, of a counterfeit drug;

10 (m) the using by any person to the person's own advantage,
11 or revealing, other than to the commissioner, an authorized agent,
12 a health authority or to the courts when relevant in any judicial
13 proceeding under this chapter, of any information acquired under
14 the authority of this chapter concerning any method or process that
15 as a trade secret is entitled to protection;

16 (n) the using, on the labeling of any drug or device or in
17 any advertising relating to such drug or device, of any
18 representation or suggestion that approval of an application with
19 respect to such drug or device is in effect under Section 431.114 or
20 Section 505, 515, or 520(g) of the federal Act, as the case may be,
21 or that such drug or device complies with the provisions of such
22 sections;

23 (o) the using, in labeling, advertising or other sales
24 promotion of any reference to any report or analysis furnished in
25 compliance with Sections 431.042-431.044 or Section 704 of the
26 federal Act;

27 (p) in the case of a prescription drug distributed or

1 offered for sale in this state, the failure of the manufacturer,
2 packer, or distributor of the drug to maintain for transmittal, or
3 to transmit, to any practitioner licensed by applicable law to
4 administer such drug who makes written request for information as
5 to such drug, true and correct copies of all printed matter that is
6 required to be included in any package in which that drug is
7 distributed or sold, or such other printed matter as is approved
8 under the federal Act. Nothing in this subsection shall be
9 construed to exempt any person from any labeling requirement
10 imposed by or under other provisions of this chapter;

11 (q)(1) placing or causing to be placed on any drug or device
12 or container of any drug or device, with intent to defraud, the
13 trade name or other identifying mark, or imprint of another or any
14 likeness of any of the foregoing;

15 (2) selling, dispensing, disposing of or causing to be
16 sold, dispensed, or disposed of, or concealing or keeping in
17 possession, control, or custody, with intent to sell, dispense, or
18 dispose of, any drug, device, or any container of any drug or
19 device, with knowledge that the trade name or other identifying
20 mark or imprint of another or any likeness of any of the foregoing
21 has been placed thereon in a manner prohibited by Subdivision (1) of
22 this subsection; or

23 (3) making, selling, disposing of, causing to be made,
24 sold, or disposed of, keeping in possession, control, or custody,
25 or concealing with intent to defraud any punch, die, plate, stone,
26 or other thing designed to print, imprint, or reproduce the
27 trademark, trade name, or other identifying mark, imprint, or

1 device of another or any likeness of any of the foregoing on any
2 drug or container or labeling of any drug or container so as to
3 render such drug a counterfeit drug;

4 (r) dispensing or causing to be dispensed a different drug
5 in place of the drug ordered or prescribed without the express
6 permission in each case of the person ordering or prescribing;

7 (s) the failure to register in accordance with Section 510
8 of the federal Act, the failure to provide any information required
9 by Section 510(j) or (k) of the federal Act, or the failure to
10 provide a notice required by Section 510(j)(2) of the federal Act;

11 (t)(1) the failure or refusal to:

12 (A) comply with any requirement prescribed under
13 Section 518 or 520(g) of the federal Act; or

14 (B) furnish any notification or other material or
15 information required by or under Section 519 or 520(g) of the
16 federal Act;

17 (2) with respect to any device, the submission of any
18 report that is required by or under this chapter that is false or
19 misleading in any material respect;

20 (u) the movement of a device in violation of an order under
21 Section 304(g) of the federal Act or the removal or alteration of
22 any mark or label required by the order to identify the device as
23 detained;

24 (v) the failure to provide the notice required by Section
25 412(b) or 412(c), the failure to make the reports required by
26 Section 412(d)(1)(B), or the failure to meet the requirements
27 prescribed under Section 412(d)(2) of the federal Act;

1 (w) except as provided under Subchapter M of this chapter
2 and Section 562.1085, Occupations Code, the acceptance by a person
3 of an unused prescription or drug, in whole or in part, for the
4 purpose of resale, after the prescription or drug has been
5 originally dispensed, or sold;

6 (x) engaging in the wholesale distribution of drugs or
7 operating as a distributor or manufacturer of devices in this state
8 without filing a licensing statement with the commissioner as
9 required by Section 431.202 or having a license as required by
10 Section 431.272, as applicable;

11 (y) engaging in the manufacture of food in this state or
12 operating as a food wholesaler in this state without having a
13 license as required by Section 431.222; or

14 (z) unless approved by the United States Food and Drug
15 Administration pursuant to the federal Act, the sale, delivery,
16 holding, or offering for sale of a self-testing kit designed to
17 indicate whether a person has a human immunodeficiency virus
18 infection, acquired immune deficiency syndrome, or a related
19 disorder or condition.

20 SECTION 2.67. (a) Section 461.018(b), Health and Safety
21 Code, is amended to read as follows:

22 (b) The commission's program under Subsection (a) must
23 include:

24 (1) establishing and maintaining a list of webpages
25 and toll-free "800" telephone numbers of nonprofit entities that
26 ~~[number to]~~ provide crisis counseling and referral services to
27 families experiencing difficulty as a result of problem or

1 compulsive gambling;

2 (2) promoting public awareness regarding the
3 recognition and prevention of problem or compulsive gambling;

4 (3) facilitating, through in-service training and
5 other means, the availability of effective assistance programs for
6 problem or compulsive gamblers; and

7 (4) conducting studies to identify adults and
8 juveniles in this state who are, or who are at risk of becoming,
9 problem or compulsive gamblers.

10 (b) Section 466.251(b), Government Code, and Section
11 2001.417(b), Occupations Code, are repealed.

12 SECTION 2.68. Section 533.034, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED
15 SERVICES. (a) The department may cooperate, negotiate, and
16 contract with local agencies, hospitals, private organizations and
17 foundations, community centers, physicians, and other persons to
18 plan, develop, and provide community-based mental health and mental
19 retardation services.

20 (b) The department may adopt a schedule of initial and
21 annual renewal compliance fees for persons that provide services
22 under a home and community-based services waiver program for
23 persons with mental retardation adopted in accordance with Section
24 1915(c) of the federal Social Security Act (42 U.S.C. Section
25 1396n), as amended, and that is funded wholly or partly by the
26 department and monitored by the department or by a designated local
27 authority in accordance with standards adopted by the department.

1 This subsection expires September 1, 2005.

2 SECTION 2.69. Section 533.035, Health and Safety Code, is
3 amended by amending Subsection (c) and by adding Subsections (e),
4 (f), and (g) to read as follows:

5 (c) A local mental health and mental retardation authority,
6 with the department's approval, shall use the funds received under
7 Subsection (b) to ensure mental health, mental retardation, and
8 chemical dependency services are provided in the local service
9 area. The local authority shall consider public input, ultimate
10 cost-benefit, and client care issues to ensure consumer choice and
11 the best use of public money in:

- 12 (1) assembling a network of service providers; and
13 (2) ~~[determining whether to become a provider of a~~
14 ~~service or to contract that service to another organization; and~~
15 ~~[(3)]~~ making recommendations relating to the most
16 appropriate and available treatment alternatives for individuals
17 in need of mental health or mental retardation services.

18 (e) In assembling a network of service providers, a local
19 mental health and mental retardation authority may serve as a
20 provider of services only as a provider of last resort and only if
21 the authority demonstrates to the department that:

22 (1) the authority has made every reasonable attempt to
23 solicit the development of an available and appropriate provider
24 base that is sufficient to meet the needs of consumers in its
25 service area; and

26 (2) there is not a willing provider of the relevant
27 services in the authority's service area or in the county where the

1 provision of the services is needed.

2 (f) The department shall review the appropriateness of a
3 local mental health and mental retardation authority's status as a
4 service provider at least annually.

5 (g) The department, together with local mental health and
6 mental retardation authorities and other interested persons, shall
7 develop and implement a plan to privatize all services by
8 intermediate facilities for persons with mental retardation and all
9 related waiver services programs operated by an authority. The
10 transfer of services to private providers must occur on or before
11 August 31, 2004. The plan must provide criteria that:

12 (1) promote the transition of services to private
13 providers in a manner that causes the least disruption practicable
14 to the consumers of those services;

15 (2) ensure the continuation of services at the same
16 level of service provided before the transfer;

17 (3) provide for consumer choice as appropriate and as
18 required by rule; and

19 (4) require local mental health and mental retardation
20 authorities to implement the privatization of services in a
21 fiscally responsible manner.

22 SECTION 2.70. Subchapter B, Chapter 533, Health and Safety
23 Code, is amended by adding Section 533.0354 to read as follows:

24 Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL
25 DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local
26 mental health authority shall provide assessment services, crisis
27 services, and intensive and comprehensive services using disease

1 management practices for adults with bipolar disorder,
2 schizophrenia, or clinically severe depression and for children
3 with serious emotional illnesses. The local mental health
4 authority shall engage an individual with treatment services that
5 are:

6 (1) ongoing and matched to the needs of the individual
7 in type, duration, and intensity;

8 (2) focused on a process of recovery designed to allow
9 the individual to progress through levels of service;

10 (3) guided by evidence-based protocols and a
11 strength-based paradigm of service; and

12 (4) monitored by a system that holds the local
13 authority accountable for specific outcomes, while allowing
14 flexibility to maximize local resources.

15 (b) The department shall require each local mental health
16 authority to incorporate jail diversion strategies into the
17 authority's disease management practices for managing adults with
18 schizophrenia and bipolar disorder to reduce the involvement of
19 those client populations with the criminal justice system.

20 (c) The department shall enter into performance contracts
21 between the department and each local mental health authority for
22 the fiscal years ending August 31, 2004, and August 31, 2005, that
23 specify measurable outcomes related to their success in using
24 disease management practices to meet the needs of the target
25 populations.

26 (d) The department shall study the implementation of
27 disease management practices, including the jail diversion

1 measures, and shall submit to the governor, the lieutenant
2 governor, and the speaker of the house of representatives a report
3 on the progress in implementing disease management practices and
4 jail diversion measures by local mental health authorities. The
5 report must be delivered not later than December 31, 2004, and must
6 include specific information on:

7 (1) the implementation of jail diversion measures
8 undertaken; and

9 (2) the effect of disparities in per capita funding
10 levels among local mental health authorities on the implementation
11 and effectiveness of disease management practices and jail
12 diversion measures.

13 (e) The department may use the fiscal year ending August 31,
14 2004, as a transition period for implementing the requirements of
15 Subsections (a)-(c).

16 SECTION 2.71. Subchapter B, Chapter 533, Health and Safety
17 Code, is amended by adding Section 533.0355 to read as follows:

18 Sec. 533.0355. ALLOCATION OF DUTIES UNDER CERTAIN MEDICAID
19 WAIVER PROGRAMS. (a) In this section, "waiver program" means the
20 local mental retardation authority waiver program established
21 under the state Medicaid program.

22 (b) A provider of services under the waiver program shall:

23 (1) develop a person-directed plan and an individual
24 program plan for each person who receives services from the
25 provider under the waiver program;

26 (2) perform justification and implementation
27 functions for the plans described by Subdivision (1);

1 (3) conduct case management under the waiver program,
2 other than case management under Subsection (c)(4), in accordance
3 with applicable state and federal laws; and

4 (4) plan, coordinate, and review the provision of
5 services to all persons who receive services from the service
6 provider under the waiver program.

7 (c) A local mental retardation authority shall:

8 (1) manage any waiting lists for services under the
9 waiver program;

10 (2) screen and assess persons who may receive services
11 under the waiver program and perform any functions relating to
12 inventory for those persons and agency planning assessments;

13 (3) perform functions relating to consumer choice and
14 enrollment for persons who receive services under the waiver
15 program;

16 (4) conduct case management under the waiver program
17 relating to funding disputes between a service provider and the
18 local mental retardation authority; and

19 (5) manage an appeals process relating to decisions
20 that affect a person receiving services under the waiver program.

21 (d) The department shall perform all administrative
22 functions under the waiver program that are not assigned to a
23 service provider under Subsection (b) or to a local mental
24 retardation authority under Subsection (c). Administrative
25 functions performed by the department include any surveying,
26 certification, and utilization review functions required under the
27 waiver program.

1 (e) The department shall review case management fees paid
2 under the waiver program to a community center and administrative
3 fees paid under the waiver program to a service provider. The
4 review must include a comparison of fees paid before the
5 implementation of this section with fees paid after the
6 implementation of this section. The department may adjust fees
7 paid based on that review.

8 (f) The department shall allocate the portion of the gross
9 reimbursement funds paid to a local authority and a service
10 provider for client services for the case management function in
11 accordance with this section and to the extent allowed by law.

12 (g) The department may adopt rules governing the functions
13 of a local mental retardation authority or service provider under
14 this section.

15 SECTION 2.72. (a) Subchapter B, Chapter 533, Health and
16 Safety Code, is amended by adding Section 533.049 to read as
17 follows:

18 Sec. 533.049. PRIVATIZATION OF STATE SCHOOL. (a) After
19 August 31, 2004, and before September 1, 2005, the department may
20 contract with a private service provider to operate a state school
21 only if:

22 (1) the Health and Human Services Commission
23 determines that the private service provider will operate the state
24 school at a cost that is at least 25 percent less than the cost to
25 the department to operate the state school;

26 (2) the Health and Human Services Commission approves
27 the contract; and

1 (3) the state school, when operated under the
2 contract, treats a population with the same characteristics and
3 need levels as the population treated by the state school when
4 operated by the department.

5 (b) On or before April 1, 2004, the department shall report
6 to the commissioner of health and human services whether the
7 department has received a proposal by a private service provider to
8 operate a state school. The report must include an evaluation of
9 the private service provider's qualifications, experience, and
10 financial strength, a determination of whether the provider can
11 operate the state school under the same standard of care as the
12 department, and an analysis of the projected savings under a
13 proposed contract with the provider. The savings analysis must
14 include all department costs to operate the state school, including
15 costs, such as employee benefits, that are not appropriated to the
16 department.

17 (c) If the department contracts with a private service
18 provider to operate a state school, the department, the Governor's
19 Office of Budget and Planning, and the Legislative Budget Board
20 shall identify sources of funding that must be transferred to the
21 department to fund the contract.

22 (d) The department may renew a contract under this section.
23 The conditions listed in Subsections (a)(1)-(3) apply to the
24 renewal of the contract.

25 (b) Section 533.049, Health and Safety Code, as added by
26 this section, takes effect September 1, 2004.

27 SECTION 2.73. (a) Subchapter B, Chapter 533, Health and

1 Safety Code, is amended by adding Section 533.050 to read as
2 follows:

3 Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL. (a)
4 After August 31, 2004, and before September 1, 2005, the department
5 may contract with a private service provider to operate a state
6 mental hospital owned by the department only if:

7 (1) the Health and Human Services Commission
8 determines that the private service provider will operate the
9 hospital at a cost that is at least 25 percent less than the cost to
10 the department to operate the hospital;

11 (2) the Health and Human Services Commission approves
12 the contract; and

13 (3) the hospital, when operated under the contract,
14 treats a population with the same characteristics and acuity levels
15 as the population treated at the hospital when operated by the
16 department.

17 (b) On or before April 1, 2004, the department shall report
18 to the commissioner of health and human services whether the
19 department has received a proposal by a private service provider to
20 operate a state mental hospital. The report must include an
21 evaluation of the private service provider's qualifications,
22 experience, and financial strength, a determination of whether the
23 provider can operate the hospital under the same standard of care as
24 the department, and an analysis of the projected savings under a
25 proposed contract with the provider. The savings analysis must
26 include all department costs to operate the hospital, including
27 costs, such as employee benefits, that are not appropriated to the

1 department.

2 (c) If the department contracts with a private service
3 provider to operate a state mental hospital, the department, the
4 Governor's Office of Budget and Planning, and the Legislative
5 Budget Board shall identify sources of funding that must be
6 transferred to the department to fund the contract.

7 (d) The department may renew a contract under this section.
8 The conditions listed in Subsections (a)(1)-(3) apply to the
9 renewal of the contract.

10 (b) Section 533.050, Health and Safety Code, as added by
11 this section, takes effect September 1, 2004.

12 SECTION 2.74. (a) Subchapter C, Chapter 533, Health and
13 Safety Code, is amended by adding Sections 533.061 and 533.0611 to
14 read as follows:

15 Sec. 533.061. REQUIRED CONTRACT PROVISIONS. (a) The
16 department shall include in a contract with an ICF-MR program
17 provider a provision stating that the contract terminates if the
18 department imposes a vendor hold on payments made to the facility
19 under the medical assistance program under Chapter 32, Human
20 Resources Code, three times during an 18-month period.

21 (b) The department shall ensure that each provision of a
22 contract with an ICF-MR program provider is consistent with
23 department and Texas Department of Human Services rules that govern
24 the program.

25 Sec. 533.0611. SANCTIONS. If the Texas Department of Human
26 Services recommends that a vendor hold be imposed on payments made
27 to an ICF-MR program provider or that the contract with the ICF-MR

1 program provider be terminated, the Texas Department of Mental
2 Health and Mental Retardation shall immediately impose the vendor
3 hold or terminate the contract, as appropriate, without conducting
4 a further investigation or providing the program provider an
5 opportunity to take corrective action.

6 (b) A rule adopted by the Texas Board of Mental Health and
7 Mental Retardation before September 1, 2003, relating to the
8 imposition of a vendor hold on payments made to an ICF-MR program
9 provider or the cancellation of a contract with an ICF-MR program
10 provider after the imposition of vendor holds, is repealed on
11 September 1, 2003.

12 (c) The change in law made by Section 533.061, Health and
13 Safety Code, as added by this section, applies only to a contract
14 entered into with an ICF-MR program provider on or after the
15 effective date of this section. A contract entered into with an
16 ICF-MR program provider before the effective date of this section
17 is governed by the law in effect on the date the contract was
18 entered into, and the former law is continued in effect for that
19 purpose.

20 SECTION 2.75. Section 533.084, Health and Safety Code, is
21 amended by adding Subsections (b-1) and (b-2) to read as follows:

22 (b-1) Notwithstanding Subsection (b) or any other law, the
23 proceeds from the disposal of any surplus real property by the
24 department that occurs before September 1, 2005:

25 (1) are not required to be deposited to the credit of
26 the department in the Texas capital trust fund established under
27 Chapter 2201, Government Code; and

1 (2) may be appropriated for any general governmental
2 purpose.

3 (b-2) Subsection (b-1) and this subsection expire September
4 1, 2005.

5 SECTION 2.76. Subchapter D, Chapter 533, Health and Safety
6 Code, is amended by adding Section 533.0844 to read as follows:

7 Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT.

8 (a) The mental health community services account is an account in
9 the general revenue fund that may be appropriated only for the
10 provision of mental health services by or under contract with the
11 department.

12 (b) The department shall deposit to the credit of the mental
13 health community services account any money donated to the state
14 for inclusion in the account, including life insurance proceeds
15 designated for deposit to the account.

16 (c) Interest earned on the mental health community services
17 account shall be credited to the account. The account is exempt
18 from the application of Section 403.095, Government Code.

19 SECTION 2.77. Subchapter D, Chapter 533, Health and Safety
20 Code, is amended by adding Section 533.0846 to read as follows:

21 Sec. 533.0846. MENTAL RETARDATION COMMUNITY SERVICES
22 ACCOUNT. (a) The mental retardation community services account is
23 an account in the general revenue fund that may be appropriated only
24 for the provision of mental retardation services by or under
25 contract with the department.

26 (b) The department shall deposit to the credit of the mental
27 retardation community services account any money donated to the

1 state for inclusion in the account, including life insurance
2 proceeds designated for deposit to the account.

3 (c) Interest earned on the mental retardation community
4 services account shall be credited to the account. The account is
5 exempt from the application of Section 403.095, Government Code.

6 SECTION 2.78. Section 534.001(b), Health and Safety Code,
7 is amended to read as follows:

8 (b) In accordance with this subtitle, a [A] community center
9 may be:

10 (1) a community mental health center that provides
11 mental health services;

12 (2) a community mental retardation center that
13 provides mental retardation services; or

14 (3) a community mental health and mental retardation
15 center that provides mental health and mental retardation services.

16 SECTION 2.78A. Section 535.002(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) If feasible and economical, the department may use local
19 mental health and mental retardation authorities to implement this
20 chapter. However, the department may not designate a [these] local
21 mental health or [and] mental retardation authority [authorities]
22 as a provider [the sole providers] of services if other providers
23 are available.

24 SECTION 2.79. Chapter 22, Human Resources Code, is amended
25 by adding Section 22.040 to read as follows:

26 Sec. 22.040. THIRD-PARTY INFORMATION. Notwithstanding any
27 other provision of this code, the department may use information

1 obtained from a third party to verify the assets and resources of a
2 person for purposes of determining the person's eligibility and
3 need for medical assistance, financial assistance, or nutritional
4 assistance. Third-party information includes information obtained
5 from:

6 (1) a consumer reporting agency, as defined by Section
7 20.01, Business & Commerce Code;

8 (2) an appraisal district; or

9 (3) the Texas Department of Transportation's vehicle
10 registration record database.

11 SECTION 2.80. (a) Section 31.0031, Human Resources Code,
12 is amended by amending Subsection (g) and adding Subsection (h) to
13 read as follows:

14 (g) In this section:

15 (1) "Caretaker [~~," caretaker~~] relative" means a person
16 who is listed as a relative eligible to receive assistance under 42
17 U.S.C. Section 602(a).

18 (2) "Payee" means a person who resides in a household
19 with a dependent child and who is within the degree of relationship
20 with the child that is required of a caretaker, but whose needs are
21 not included in determining the amount of financial assistance
22 provided for the person's household.

23 (h) The department shall require each payee to sign a bill
24 of responsibilities that defines the responsibilities of the state
25 and of the payee. The responsibility agreement must require that a
26 payee comply with the requirements of Subsections (d)(1), (2), (5),
27 (6), and (7).

1 (b) Not later than January 1, 2004, the Texas Department of
2 Human Services shall require each payee of financial assistance
3 under Chapter 31, Human Resources Code, who received that
4 assistance on behalf of a dependent child before September 1, 2003,
5 and each recipient of financial assistance under Chapter 31, Human
6 Resources Code, who received that assistance before September 1,
7 2003, to enter into a responsibility agreement that complies with
8 the requirements of Section 31.0031, Human Resources Code, as
9 amended by this section, to continue receiving that assistance.
10 The department may not enforce the terms of the new agreement until
11 the payee or recipient has an opportunity to enter into the
12 agreement.

13 SECTION 2.81. (a) Sections 31.0032, 31.0033, and 31.0034,
14 Human Resources Code, are amended to read as follows:

15 Sec. 31.0032. PAYMENT OF ASSISTANCE AFTER PERFORMANCE
16 [~~PENALTIES AND SANCTIONS~~]. (a) Except as provided by Section
17 31.0033 and notwithstanding any other law, a person for whom the
18 department has made a determination of eligibility for financial
19 assistance and for whom an initial payment of that assistance has
20 been made may not receive any subsequent monthly payments of
21 assistance for the person or the person's family until the person
22 cooperates with the requirements of the responsibility agreement
23 under Section 31.0031. The person and the person's family may
24 receive a financial assistance payment each month only if the
25 person cooperated with those requirements during the previous month
26 [231.115, Family Code, as added by Chapter 911, Acts of the 75th
27 Legislature, Regular Session, 1997, if after an investigation the

1 ~~department or the Title IV-D agency determines that a person is not~~
2 ~~complying with a requirement of the responsibility agreement~~
3 ~~required under Section 31.0031, the department immediately shall~~
4 ~~apply appropriate sanctions or penalties regarding the assistance~~
5 ~~provided to or for that person under this chapter].~~

6 (b) The department shall immediately notify the caretaker
7 relative, second parent, or payee receiving the financial
8 assistance if the department will not make the financial assistance
9 payment for a one-month period because of a person's failure to
10 cooperate with the requirements of the responsibility agreement
11 during that month [~~whether sanctions will be applied under this~~
12 ~~section)].~~

13 (c) The Health and Human Services Commission, or any health
14 and human services agency, as defined by Section 531.001,
15 Government Code, may deny medical assistance for an individual, to
16 the extent allowed by federal law, who is eligible for financial
17 assistance but to whom that assistance is not paid because of the
18 individual's failure to cooperate. Medical assistance to the
19 person's family may not be denied for the individual's failure to
20 cooperate. This subsection prohibits the denial of medical
21 assistance to persons receiving assistance under this chapter under
22 the age of 19, pregnant adults, and any other person who may not be
23 denied medical assistance under federal law.

24 (d) This section does not prohibit the Texas Workforce
25 Commission, the Health and Human Services Commission, or any health
26 and human services agency, as defined by Section 531.001,
27 Government Code, [department] from providing medical assistance,

1 child care, or any other social or support services for an
2 individual who is eligible for financial assistance but to whom
3 that assistance is not paid because of the individual's failure to
4 cooperate [~~subject to sanctions or penalties under this chapter~~].

5 (e) The department by rule shall establish procedures to
6 determine whether a person has cooperated with the requirements of
7 the responsibility agreement during each one-month period.

8 Sec. 31.0033. GOOD CAUSE [~~NONCOMPLIANCE~~] HEARING FOR
9 FAILURE TO COOPERATE. (a) If the department or Title IV-D agency
10 determines that a person has failed to cooperate with the
11 requirements of the responsibility agreement under Section 31.0031
12 during a one-month period [~~penalties and sanctions should be~~
13 ~~applied under Section 31.0032~~], the person determined to have
14 failed to cooperate [~~not complied~~] or, if different, the person
15 receiving the financial assistance may request a hearing to show
16 good cause for failure to cooperate [~~noncompliance~~] not later than
17 the 13th day after the date on which notice is received under
18 Section 31.0032. If the person determined to have failed to
19 cooperate or, if different, the person receiving the financial
20 assistance requests a hearing to show good cause not later than the
21 13th day after the date on which notice is received under Section
22 31.0032, the department may not withhold or reduce the payment of
23 financial assistance until the 31st day after the department
24 receives the request, provided the department completes the hearing
25 before the 31st day, or the date the hearing is completed. On a
26 showing of good cause for failure to cooperate [~~noncompliance~~], the
27 person may receive a financial assistance payment for the month in

1 which the person failed to cooperate [~~sanctions may not be~~
2 ~~imposed~~].

3 (b) The department shall promptly conduct a hearing if a
4 timely request is made under Subsection (a).

5 (c) If the department finds that good cause for the person's
6 failure to cooperate [~~noncompliance~~] was not shown at a hearing,
7 the department may not make a financial assistance payment in any
8 amount to the person for the person or the person's family for the
9 month in which the person failed to cooperate [~~shall apply~~
10 ~~appropriate sanctions or penalties to or for that person until the~~
11 ~~department, or the Title IV-D agency in a Title IV-D case,~~
12 ~~determines that the person is in compliance with the terms of the~~
13 ~~responsibility agreement~~].

14 (d) The department by rule shall establish criteria for good
15 cause failure to cooperate [~~noncompliance~~] and guidelines for what
16 constitutes a good faith effort on behalf of a recipient under this
17 section.

18 (e) Except as provided by a waiver or modification granted
19 under Section 31.0322, a person has good cause for failing or
20 refusing to cooperate with the requirement of the responsibility
21 agreement under Section 31.0031(d)(1) only if the person's
22 cooperation would be harmful to the physical, mental, or emotional
23 health of the person or the person's dependent child.

24 Sec. 31.0034. ANNUAL REPORT. The department shall prepare
25 and submit an annual report to the legislature that contains
26 statistical information regarding persons who are applying for or
27 receiving financial assistance or services under this chapter,

1 including the number of persons receiving assistance, the type of
2 assistance those persons are receiving, and the length of time
3 those persons have been receiving the assistance. The report also
4 must contain information on:

5 (1) the number of persons to whom [~~sanctions and~~] time
6 limits apply;

7 (2) the number of persons under each time limit
8 category;

9 (3) the number of persons who are exempt from
10 participation under Section 31.012(c);

11 (4) the number of persons who were receiving financial
12 assistance under this chapter but are no longer eligible to receive
13 that assistance because they failed to cooperate [~~comply~~] with the
14 requirements prescribed by Section 31.0031;

15 (5) the number of persons who are no longer eligible to
16 receive financial assistance or transitional benefits under this
17 chapter because:

18 (A) the person's household income has increased
19 due to employment; or

20 (B) the person has exhausted the person's
21 benefits under this chapter; [~~and~~]

22 (6) the number of persons receiving child care, job
23 training, or other support services designed to assist the
24 transition to self-sufficiency; and

25 (7) the number of persons who were eligible to receive
26 financial assistance under this chapter for each one-month period
27 but to whom that financial assistance was not paid because the

1 person failed to cooperate with the requirements of the
2 responsibility agreement under Section 31.0031.

3 (b) Subchapter A, Chapter 31, Human Resources Code, is
4 amended by adding Section 31.00331 to read as follows:

5 Sec. 31.00331. PENALTY FOR FAILURE TO COOPERATE. (a) A
6 person who, during a one-month period, fails to cooperate with the
7 requirements of the responsibility agreement under Section 31.0031
8 without good cause may not receive a financial assistance payment
9 for the person or the person's family for that month.

10 (b) When the department is notified by the Texas Workforce
11 Commission that a client failed to cooperate with work
12 requirements, the department shall suspend the case for 13 days to
13 allow the client to appeal that finding. The case shall be denied
14 if the client fails to request an appeal within that 13-day period.
15 If the client requests an appeal and the appeal is denied, the case
16 shall be denied immediately. If the appeal is upheld, the case
17 shall be reinstated.

18 (c) A person who fails to cooperate with the responsibility
19 agreement for two consecutive months becomes ineligible for
20 financial assistance for the person or the person's family. The
21 person may reapply for financial assistance, but must cooperate
22 with the requirements of the responsibility agreement for a
23 one-month period before receiving an assistance payment for that
24 month.

25 (c) The changes in law made by this section apply to a person
26 receiving financial assistance under Chapter 31, Human Resources
27 Code, on or after the effective date of this section, regardless of

1 the date on which eligibility for financial assistance was
2 determined.

3 SECTION 2.82. Subchapter A, Chapter 31, Human Resources
4 Code, is amended by adding Section 31.0038 to read as follows:

5 Sec. 31.0038. TEMPORARY EXCLUSION OF NEW SPOUSE'S INCOME.

6 (a) Subject to the limitations prescribed by Subsection (b),
7 income earned by an individual who marries an individual receiving
8 financial assistance at the time of the marriage may not be
9 considered by the department during the six-month period following
10 the date of the marriage for purposes of determining:

11 (1) the amount of financial assistance granted to an
12 individual under this chapter for the support of dependent
13 children; or

14 (2) whether the family meets household income and
15 resource requirements for financial assistance under this chapter.

16 (b) To be eligible for the income disregard provided by
17 Subsection (a), the combined income of the individual receiving
18 financial assistance and the new spouse cannot exceed 200 percent
19 of the federal poverty level for their family size.

20 SECTION 2.83. Sections 31.012(b) and (c), Human Resources
21 Code, are amended to read as follows:

22 (b) The department by rule shall establish criteria for good
23 cause failure to cooperate [~~noncompliance~~] and for notification
24 procedures regarding participation in work or employment
25 activities under this section.

26 (c) A person who is the caretaker of a physically or
27 mentally disabled child who requires the caretaker's presence is

1 not required to participate in a program under this section. A
2 ~~[Effective January 1, 2000, a single person who is the caretaker of~~
3 ~~a child is not required to participate in a program under this~~
4 ~~section until the caretaker's youngest child at the time the~~
5 ~~caretaker first became eligible for assistance reaches the age of~~
6 ~~three. Effective September 1, 2000, a single person who is the~~
7 ~~caretaker of a child is exempt until the caretaker's youngest child~~
8 ~~at the time the caretaker first became eligible for assistance~~
9 ~~reaches the age of two. Effective September 1, 2001, a]~~ single
10 person who is the caretaker of a child is exempt until the
11 caretaker's youngest child at the time the caretaker first became
12 eligible for assistance reaches the age of one. Notwithstanding
13 Sections 31.0035(b) and 32.0255(b), the department shall provide to
14 a person who is exempt under this subsection and who voluntarily
15 participates in a program under Subsection (a)(2) six months of
16 transitional benefits in addition to the applicable limit
17 prescribed by Section 31.0065.

18 SECTION 2.84. Subchapter A, Chapter 31, Human Resources
19 Code, is amended by adding Section 31.015 to read as follows:

20 Sec. 31.015. HEALTHY MARRIAGE DEVELOPMENT PROGRAM. (a)
21 Subject to available federal funding, the department shall develop
22 and implement a healthy marriage development program for recipients
23 of financial assistance under this chapter.

24 (b) The healthy marriage development program shall promote
25 and provide three instructional courses on the following topics:

26 (1) premarital counseling for engaged couples and
27 marriage counseling for married couples that includes skill

1 development for:

2 (A) anger resolution;

3 (B) communication;

4 (C) honoring your spouse; and

5 (D) managing a budget;

6 (2) physical fitness and active lifestyles and
7 nutrition and cooking, including:

8 (A) abstinence for all unmarried persons,
9 including abstinence for persons who have previously been married;
10 and

11 (B) nutrition on a budget; and

12 (3) parenting skills, including parenting skills for
13 character development, academic success, and stepchildren.

14 (c) The department shall provide to a recipient of financial
15 assistance under this chapter additional financial assistance of
16 not more than \$20 for the recipient's participation in a course
17 offered through the healthy marriage development program up to a
18 maximum payment of \$60 a month.

19 (d) The department may provide the courses or may contract
20 with any person, including a community or faith-based organization,
21 for the provision of the courses. The department must provide all
22 participants with an option of attending courses in a
23 non-faith-based organization.

24 (e) The department shall develop rules as necessary for the
25 administration of the healthy marriage development program.

26 (f) The department must ensure that the courses provided by
27 the department and courses provided through contracts with other

1 organizations will be sensitive to the needs of individuals from
2 different religions, races, and genders.

3 SECTION 2.85. (a) Section 32.021, Human Resources Code, is
4 amended by adding Subsections (q), (r), and (s) to read as follows:

5 (q) The department shall include in its contracts for the
6 delivery of medical assistance by nursing facilities clearly
7 defined minimum standards that relate directly to the quality of
8 care for residents of those facilities. The department shall
9 consider the recommendations made by the nursing facility quality
10 assurance team under Section 32.060 in establishing the standards.
11 The department shall include in each contract:

12 (1) specific performance measures by which the
13 department may evaluate the extent to which the nursing facility is
14 meeting the standards; and

15 (2) provisions that allow the department to terminate
16 the contract if the nursing facility is not meeting the standards.

17 (r) The department may not award a contract for the delivery
18 of medical assistance to a nursing facility that does not meet the
19 minimum standards that would be included in the contract as
20 required by Subsection (q). The department shall terminate a
21 contract for the delivery of medical assistance by a nursing
22 facility that does not meet or maintain the minimum standards
23 included in the contract in a manner consistent with the terms of
24 the contract.

25 (s) Not later than November 15 of each even-numbered year,
26 the department shall submit a report to the legislature regarding
27 nursing facilities that contract with the department to provide

1 medical assistance under this chapter and other nursing facilities
2 with which the department was prohibited to contract as provided by
3 Subsection (r). The department may include the report required
4 under this section with the report made by the long-term care
5 legislative oversight committee as required by Section 242.654,
6 Health and Safety Code. The report must include:

7 (1) recommendations for improving the quality of
8 information provided to consumers about the facilities;

9 (2) the minimum standards and performance measures
10 included in the department's contracts with those facilities;

11 (3) the performance of the facilities with regard to
12 the minimum standards;

13 (4) the number of facilities with which the department
14 has terminated a contract or to which the department will not award
15 a contract because the facilities do not meet the minimum
16 standards; and

17 (5) the overall impact of the minimum standards on the
18 quality of care provided by the facilities, consumers' access to
19 facilities, and cost of care.

20 (b) Section 32.021(q), Human Resources Code, as added by
21 this section, applies only to a contract for the delivery of medical
22 assistance by a nursing facility that is entered into or renewed on
23 or after May 1, 2004. A contract for the delivery of medical
24 assistance by a nursing facility entered into before that date is
25 governed by the law in effect on the date the contract was entered
26 into, and the former law is continued in effect for that purpose.

27 SECTION 2.86. Subchapter B, Chapter 32, Human Resources

1 Code, is amended by adding Section 32.0212 to read as follows:

2 Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE.
3 Notwithstanding any other law and subject to Section 533.0025,
4 Government Code, the department shall provide medical assistance
5 for acute care through the Medicaid managed care system implemented
6 under Chapter 533, Government Code.

7 SECTION 2.87. (a) Section 32.024, Human Resources Code, is
8 amended by adding Subsections (t-1), (z), and (z-1) to read as
9 follows:

10 (t-1) The department, in its rules governing the medical
11 transportation program, may not prohibit a recipient of medical
12 assistance from receiving transportation services through the
13 program on the basis that the recipient resides in a nursing
14 facility.

15 (z) In its rules and standards governing the vendor drug
16 program, the department, to the extent allowed by federal law and if
17 the department determines the policy to be cost-effective, may
18 ensure that a recipient of prescription drug benefits under the
19 medical assistance program does not, unless authorized by the
20 department in consultation with the recipient's attending
21 physician or advanced practice nurse, receive under the medical
22 assistance program:

23 (1) more than four different outpatient brand-name
24 prescription drugs during a month; or

25 (2) more than a 34-day supply of a brand-name
26 prescription drug at any one time.

27 (z-1) Subsection (z) does not affect any other limit on

1 prescription medications otherwise prescribed by department rule.

2 (b) Section 32.024(z), Human Resources Code, as added by
3 this section, applies to a person receiving medical assistance on
4 or after the effective date of this section regardless of the date
5 on which the person began receiving that medical assistance.

6 SECTION 2.88. Section 32.026(e), Human Resources Code, is
7 amended to read as follows:

8 (e) The department shall permit a recertification review of
9 the eligibility and need for medical assistance of a child under 19
10 years of age to be conducted by a person-to-person telephone
11 interview or through a combination of a telephone interview and
12 mail correspondence instead of through a personal appearance at a
13 department office.

14 SECTION 2.89. Section 32.0261, Human Resources Code, is
15 amended to read as follows:

16 Sec. 32.0261. CONTINUOUS ELIGIBILITY. The department shall
17 adopt rules in accordance with 42 U.S.C. Section 1396a(e)(12), as
18 amended, to provide for a period of continuous eligibility for a
19 child under 19 years of age who is determined to be eligible for
20 medical assistance under this chapter. The rules shall provide
21 that the child remains eligible for medical assistance, without
22 additional review by the department and regardless of changes in
23 the child's resources or income, until the earlier of:

24 (1) six months from the [~~first anniversary of the~~]
25 date on which the child's eligibility was determined; or

26 (2) the child's 19th birthday.

27 SECTION 2.90. Section 32.0315(a), Human Resources Code, is

1 amended to read as follows:

2 (a) Subject to appropriated state funds, the [~~The~~
3 department shall establish procedures and formulas for the
4 allocation of federal medical assistance funds that are directed to
5 be used to support graduate medical education in connection with
6 the medical assistance program.

7 SECTION 2.91. Section 10(c), Chapter 584, Acts of the 77th
8 Legislature, Regular Session, 2001, is amended to read as follows:

9 (c) The Health and Human Services Commission or the
10 appropriate state agency operating part of the medical assistance
11 program under Chapter 32, Human Resources Code, shall adopt rules
12 required by Section 32.0261, Human Resources Code, as added by this
13 Act, so that the rules take effect in accordance with that section
14 not earlier than September 1, 2002, or later than June 1, 2004
15 [~~2003~~]. The rules must provide for a 12-month period of continuous
16 eligibility in accordance with that section for a child whose
17 initial or continued eligibility is determined on or after the
18 effective date of the rules.

19 SECTION 2.92. Section 32.028, Human Resources Code, is
20 amended by amending Subsection (g) and adding Subsection (i) to
21 read as follows:

22 (g) Subject to Subsection (i), the [~~The~~ Health and Human
23 Services Commission shall ensure that the rules governing the
24 determination of rates paid for nursing home services improve the
25 quality of care by:

26 (1) providing a program offering incentives for
27 increasing direct care staff and direct care wages and benefits,

1 but only to the extent that appropriated funds are available after
2 money is allocated to base rate reimbursements as determined by the
3 Health and Human Services Commission's nursing facility rate
4 setting methodologies; and

5 (2) if appropriated funds are available after money is
6 allocated for payment of incentive-based rates under Subdivision
7 (1), providing incentives that incorporate the use of a quality of
8 care index, a customer satisfaction index, and a resolved
9 complaints index developed by the commission.

10 (i) The Health and Human Services Commission shall ensure
11 that rules governing the incentives program described by Subsection
12 (g)(1):

13 (1) provide that participation in the program by a
14 nursing home is voluntary;

15 (2) do not impose on a nursing home not participating
16 in the program a minimum spending requirement for direct care staff
17 wages and benefits; and

18 (3) do not set a base rate for a nursing home
19 participating in the program that is more than the base rate for a
20 nursing home not participating in the program.

21 SECTION 2.93. Section 32.028, Human Resources Code, is
22 amended by adding Subsections (j), (k), and (l) to read as follows:

23 (j) The Health and Human Services Commission shall adopt
24 rules governing the determination of the amount of reimbursement or
25 credit for restocking drugs under Section 562.1085, Occupations
26 Code, that recognize the costs of processing the drugs, including
27 the cost of:

1 (1) reporting the drug's prescription number and date
2 of original issue;

3 (2) verifying whether the drug's expiration date or
4 the drug's recommended shelf life exceeds 120 days;

5 (3) determining the source of payment; and

6 (4) preparing credit records.

7 (k) The commission shall provide an electronic system for
8 the issuance of credit for returned drugs that complies with the
9 Health Insurance Portability and Accountability Act of 1996, Pub.
10 L. No. 104-191, as amended. To ensure a cost-effective system, only
11 drugs for which the credit exceeds the cost of the restocking fee by
12 at least 100 percent are eligible for credit.

13 (l) The commission shall establish a task force to develop
14 the rules necessary to implement Subsections (j) and (k). The task
15 force must include representatives of nursing facilities and
16 long-term care facilities.

17 SECTION 2.94. Subchapter B, Chapter 32, Human Resources
18 Code, is amended by adding Section 32.0291 to read as follows:

19 Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS.

20 (a) Notwithstanding any other law, the department may:

21 (1) perform a prepayment review of a claim for
22 reimbursement under the medical assistance program to determine
23 whether the claim involves fraud or abuse; and

24 (2) as necessary to perform that review, withhold
25 payment of the claim for not more than five working days without
26 notice to the person submitting the claim.

27 (b) Notwithstanding any other law, the department may

1 impose a postpayment hold on payment of future claims submitted by a
2 provider if the department has reliable evidence that the provider
3 has committed fraud or wilful misrepresentation regarding a claim
4 for reimbursement under the medical assistance program. The
5 department must notify the provider of the postpayment hold not
6 later than the fifth working day after the date the hold is imposed.

7 SECTION 2.95. Section 32.032, Human Resources Code, is
8 amended to read as follows:

9 Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE.
10 The department shall adopt reasonable rules for minimizing the
11 opportunity for fraud and abuse, for establishing and maintaining
12 methods for detecting and identifying situations in which a
13 question of fraud or abuse in the program may exist, and for
14 referring cases where fraud or abuse appears to exist to the
15 appropriate law enforcement agencies for prosecution.

16 SECTION 2.96. Section 32.0321, Human Resources Code, is
17 amended to read as follows:

18 Sec. 32.0321. SURETY BOND. (a) The department by rule may
19 require each provider of medical assistance in a provider type that
20 has demonstrated significant potential for fraud or abuse to file
21 with the department a surety bond in a reasonable amount. The
22 department by rule shall require a provider of medical assistance
23 to file with the department a surety bond in a reasonable amount if
24 the department identifies a pattern of suspected fraud or abuse
25 involving criminal conduct relating to the provider's services
26 under the medical assistance program that indicates the need for
27 protection against potential future acts of fraud or abuse.

1 (b) The bond under Subsection (a) must be payable to the
2 department to compensate the department for damages resulting from
3 or penalties or fines imposed in connection with an act of fraud or
4 abuse committed by the provider under the medical assistance
5 program.

6 (c) Subject to Subsection (d) or (e), the department by rule
7 may require each provider of medical assistance that establishes a
8 resident's trust fund account to post a surety bond to secure any
9 shortages in the account. The bond must be payable to the
10 department to compensate residents of the bonded provider for trust
11 funds that are lost, stolen, or otherwise unaccounted for if the
12 provider does not repay any deficiency in a resident's trust fund
13 account to the person legally entitled to receive the funds.

14 (d) The department may not require the amount of a surety
15 bond posted for a single facility provider under Subsection (c) to
16 exceed the average of the total average monthly balance of all the
17 provider's resident trust fund accounts for the 12-month period
18 preceding the bond issuance or renewal date, excluding the amounts
19 of the residents' personal needs allowances.

20 (e) The department may not require the amount of a surety
21 bond posted for a multiple facility provider under Subsection (c)
22 to exceed the average of the total average monthly balance of all
23 the provider's resident trust fund accounts in all of the provider's
24 facilities for the 12-month period preceding the bond issuance or
25 renewal date, excluding the amounts of the residents' personal
26 needs allowances.

27 SECTION 2.97. (a) Subchapter B, Chapter 32, Human

1 Resources Code, is amended by adding Section 32.0423 to read as
2 follows:

3 Sec. 32.0423. RECOVERY OF REIMBURSEMENTS FROM HEALTH
4 COVERAGE PROVIDERS. To the extent allowed by federal law, a health
5 care service provider must seek reimbursement from available
6 third-party health coverage or insurance that the provider knows
7 about or should know about before billing the medical assistance
8 program.

9 (b) Section 32.0423, Human Resources Code, as added by this
10 section, applies to a person receiving medical assistance on or
11 after the effective date of this section regardless of the date on
12 which the person began receiving that medical assistance.

13 SECTION 2.98. (a) Subchapter B, Chapter 32, Human
14 Resources Code, is amended by adding Section 32.0462 to read as
15 follows:

16 Sec. 32.0462. MEDICATIONS AND MEDICAL SUPPLIES. The
17 department may adopt rules establishing procedures for the purchase
18 and distribution of medically necessary, over-the-counter
19 medications and medical supplies under the medical assistance
20 program that were previously being provided by prescription if the
21 department determines it is more cost-effective than obtaining
22 those medications and medical supplies through a prescription.

23 (b) Not later than January 1, 2004, the Health and Human
24 Services Commission shall submit a report to the clerks of the
25 standing committees of the senate and house of representatives with
26 jurisdiction over the state Medicaid program describing the status
27 of any cost savings generated by purchasing over-the-counter

1 medications and medical supplies as provided by Section 32.0462,
2 Human Resources Code, as added by this section. The report must be
3 updated not later than January 1, 2005.

4 SECTION 2.99. Section 32.050, Human Resources Code, is
5 amended by adding Subsection (d) to read as follows:

6 (d) A nursing facility, a home health services provider, or
7 any other similar long-term care services provider that is
8 Medicare-certified and provides care to individuals who are
9 eligible for Medicare must:

10 (1) seek reimbursement from Medicare before billing
11 the medical assistance program for services provided to an
12 individual identified under Subsection (a); and

13 (2) as directed by the department, appeal Medicare
14 claim denials for payment services provided to an individual
15 identified under Subsection (a).

16 SECTION 2.100. (a) Subchapter B, Chapter 32, Human
17 Resources Code, is amended by adding Section 32.060 to read as
18 follows:

19 Sec. 32.060. NURSING FACILITY QUALITY ASSURANCE TEAM. (a)
20 The nursing facility quality assurance team is established to make
21 recommendations to the department designed to promote high-quality
22 care for residents of nursing facilities.

23 (b) The team is composed of nine members appointed by the
24 governor as follows:

25 (1) two physicians with expertise in providing
26 long-term care;

27 (2) one registered nurse with expertise in providing

1 long-term care;

2 (3) three nursing facility advocates not affiliated
3 with the nursing facility industry; and

4 (4) three representatives of the nursing facility
5 industry.

6 (c) The governor shall designate a member of the team to
7 serve as presiding officer. The members of the team shall elect any
8 other necessary officers.

9 (d) The team shall meet at the call of the presiding
10 officer.

11 (e) A member of the team serves at the will of the governor.

12 (f) A member of the team may not receive compensation for
13 serving on the team but is entitled to reimbursement for travel
14 expenses incurred by the member while conducting the business of
15 the team as provided by the General Appropriations Act.

16 (g) The team shall:

17 (1) develop and recommend clearly defined minimum
18 standards to be considered for inclusion in contracts between the
19 department and nursing facilities for the delivery of medical
20 assistance under this chapter that are designed to:

21 (A) ensure that the care provided by nursing
22 facilities to residents who are recipients of medical assistance
23 meets or exceeds the minimum acceptable standard of care; and

24 (B) encourage nursing facilities to provide the
25 highest quality of care to those residents; and

26 (2) develop and recommend improvements to consumers'
27 access to information regarding the quality of care provided by

1 nursing facilities that contract with the department to provide
2 medical assistance, including improvements in:

3 (A) the types and amounts of information to which
4 consumers have access, such as expanding the types and amounts of
5 information available through the department's Internet website;
6 and

7 (B) the department's data systems that compile
8 nursing facilities' inspection or survey data and other data
9 relating to quality of care in nursing facilities.

10 (h) In developing minimum standards for contracts as
11 required by Subsection (g)(1), the team shall:

12 (1) study the risk factors identified by the Texas
13 Department of Insurance as contributing to lawsuits against nursing
14 facilities;

15 (2) consider for inclusion in the minimum standards:

16 (A) the practices the Texas Department of
17 Insurance recommends nursing facilities adopt to reduce the
18 likelihood of those lawsuits; and

19 (B) other standards designed to improve the
20 quality of care;

21 (3) focus on a minimum number of critical standards
22 necessary to identify nursing facilities with poor quality services
23 that should not be awarded contracts for the delivery of medical
24 assistance; and

25 (4) with the assistance of the department, assess the
26 potential cost impacts on providers necessary to meet the minimum
27 standards, and the commensurate fiscal impact on the department's

1 appropriations requirement.

2 (i) The department shall ensure the accuracy of information
3 provided to the team for use by the team in performing the team's
4 duties under this section. The Health and Human Services
5 Commission shall provide administrative support and resources to
6 the team and request additional administrative support and
7 resources from health and human services agencies as necessary.

8 (b) The governor shall appoint the members of the nursing
9 facility quality assurance team established under Section 32.060,
10 Human Resources Code, as added by this section, not later than
11 January 1, 2004.

12 (c) The nursing facility quality assurance team shall
13 develop and make the recommendations required by Section 32.060,
14 Human Resources Code, as added by this section, not later than May
15 1, 2004.

16 (d) The nursing facility quality assurance team shall
17 report on its work and recommendations to the governor and the
18 Legislative Budget Board no later than October 1, 2004, for
19 consideration by the 79th Legislature.

20 SECTION 2.101. Subchapter B, Chapter 32, Human Resources
21 Code, is amended by adding Section 32.061 to read as follows:

22 Sec. 32.061. COMMUNITY ATTENDANT SERVICES PROGRAM. Any home
23 and community-based services that the department provides under
24 Section 1929, Social Security Act (42 U.S.C. Section 1396t) and its
25 subsequent amendments to functionally disabled individuals who
26 have income that exceeds the limit established by federal law for
27 Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.)

1 and its subsequent amendments shall be provided through the
2 community attendant services program.

3 SECTION 2.102. (a) Subchapter B, Chapter 32, Human
4 Resources Code, is amended by adding Section 32.063 to read as
5 follows:

6 Sec. 32.063. THIRD-PARTY BILLING VENDORS. (a) A
7 third-party billing vendor may not submit a claim with the
8 department for reimbursement on behalf of a provider of medical
9 services under the medical assistance program unless the vendor has
10 entered into a contract with the department authorizing that
11 activity.

12 (b) To the extent practical, the contract shall contain
13 provisions comparable to the provisions contained in contracts
14 between the department and providers of medical services, with an
15 emphasis on provisions designed to prevent fraud or abuse under the
16 medical assistance program. At a minimum, the contract must
17 require the third-party billing vendor to:

18 (1) provide documentation of the vendor's authority to
19 bill on behalf of each provider for whom the vendor submits claims;

20 (2) submit a claim in a manner that permits the
21 department to identify and verify the vendor, any computer or
22 telephone line used in submitting the claim, any relevant user
23 password used in submitting the claim, and any provider number
24 referenced in the claim; and

25 (3) subject to any confidentiality requirements
26 imposed by federal law, provide the department, the office of the
27 attorney general, or authorized representatives with:

1 (A) access to any records maintained by the
2 vendor, including original records and records maintained by the
3 vendor on behalf of a provider, relevant to an audit or
4 investigation of the vendor's services or another function of the
5 department or office of the attorney general relating to the
6 vendor; and

7 (B) if requested, copies of any records described
8 by Paragraph (A) at no charge to the department, the office of the
9 attorney general, or authorized representatives.

10 (c) On receipt of a claim submitted by a third-party billing
11 vendor, the department shall send a remittance notice directly to
12 the provider referenced in the claim. The notice must:

13 (1) include detailed information regarding the claim
14 submitted on behalf of the provider; and

15 (2) require the provider to review the claim for
16 accuracy and notify the department promptly regarding any errors.

17 (d) The department shall take all action necessary,
18 including any modifications of the department's claims processing
19 system, to enable the department to identify and verify a
20 third-party billing vendor submitting a claim for reimbursement
21 under the medical assistance program, including identification and
22 verification of any computer or telephone line used in submitting
23 the claim, any relevant user password used in submitting the claim,
24 and any provider number referenced in the claim.

25 (e) The department shall audit each third-party billing
26 vendor subject to this section at least annually to prevent fraud
27 and abuse under the medical assistance program.

1 (b) Section 32.063, Human Resources Code, as added by this
2 section, takes effect January 1, 2004.

3 SECTION 2.103. (a) Subchapter B, Chapter 32, Human
4 Resources Code, is amended by adding Section 32.064 to read as
5 follows:

6 Sec. 32.064. COST SHARING. (a) To the extent permitted
7 under Title XIX, Social Security Act (42 U.S.C. Section 1396 et
8 seq.), as amended, and any other applicable law or regulations, the
9 Health and Human Services Commission shall adopt provisions
10 requiring recipients of medical assistance to share the cost of
11 medical assistance, including provisions requiring recipients to
12 pay:

13 (1) an enrollment fee;

14 (2) a deductible; or

15 (3) coinsurance or a portion of the plan premium, if
16 the recipients receive medical assistance under the Medicaid
17 managed care program under Chapter 533, Government Code, or a
18 Medicaid managed care demonstration project under Section 32.041.

19 (b) Subject to Subsection (d), cost-sharing provisions
20 adopted under this section shall ensure that families with higher
21 levels of income are required to pay progressively higher
22 percentages of the cost of the medical assistance.

23 (c) If cost-sharing provisions imposed under Subsection (a)
24 include requirements that recipients pay a portion of the plan
25 premium, the commission shall specify the manner in which the
26 premium is paid. The commission may require that the premium be
27 paid to the commission, an agency operating part of the medical

1 assistance program, or the Medicaid managed care plan.

2 (d) Cost-sharing provisions adopted under this section may
3 be determined based on the maximum level authorized under federal
4 law and applied to income levels in a manner that minimizes
5 administrative costs.

6 (b) The changes in law made by Section 32.064, Human
7 Resources Code, as added by this section, apply to a person
8 receiving medical assistance on or after the effective date of this
9 section, regardless of the date on which eligibility for that
10 assistance was determined.

11 SECTION 2.104. Section 48.401(1), Human Resources Code, is
12 amended to read as follows:

13 (1) "Agency" means:

14 (A) an entity licensed under Chapter 142, Health
15 and Safety Code; or

16 (B) a person exempt from licensing under Section
17 142.003(a)(19), Health and Safety Code.

18 SECTION 2.105. Section 73.0051, Human Resources Code, is
19 amended by adding Subsection (1) to read as follows:

20 (1) The council by rule may establish a system of payments
21 by families of children receiving services under this chapter,
22 including a schedule of sliding fees, in a manner consistent with 34
23 C.F.R. Sections 303.12(a)(3)(iv), 303.520, and 303.521.

24 SECTION 2.106. (a) Sections 91.027(a) and (b), Human
25 Resources Code, are amended to read as follows:

26 (a) To the extent that funds are available under Sections
27 521.421(f), as added by Chapter 510, Acts of the 75th Legislature,

1 Regular Session, 1997, and 521.422(b), Transportation Code, the
2 ~~[The]~~ commission shall operate ~~[develop]~~ a Blindness Education,
3 Screening, and Treatment Program to provide:

4 (1) blindness prevention education and ~~[to provide]~~
5 screening and treatment to prevent blindness for residents who are
6 not covered under an adequate health benefit plan; and

7 (2) transition services to blind disabled individuals
8 eligible for vocational rehabilitation services under Section
9 91.052.

10 (b) ~~[The commission shall implement the program only to the~~
11 ~~extent that funds are available under Section 521.421(f),~~
12 ~~Transportation Code.]~~ The program shall include:

13 (1) public education about blindness and other eye
14 conditions;

15 (2) screenings and eye examinations to identify
16 conditions that may cause blindness; ~~[and]~~

17 (3) treatment procedures necessary to prevent
18 blindness; and

19 (4) transition services.

20 (b) The Texas Commission for the Blind shall establish the
21 consolidated program under Section 91.027, Human Resources Code, as
22 amended by this section, not later than the 90th day after the
23 effective date of this section.

24 SECTION 2.107. (a) Section 111.052, Human Resources Code,
25 is amended to read as follows:

26 Sec. 111.052. GENERAL FUNCTIONS. (a) The commission
27 shall, to the extent of resources available and priorities

1 established by the board, provide rehabilitation services directly
2 or through public or private resources to individuals determined by
3 the commission to be eligible for the services under a vocational
4 rehabilitation program[~~, an extended rehabilitation services~~
5 ~~program,~~] or other program established to provide rehabilitative
6 services.

7 (b) In carrying out the purposes of this chapter, the
8 commission may:

9 (1) cooperate with other departments, agencies,
10 political subdivisions, and institutions, both public and private,
11 in providing the services authorized by this chapter to eligible
12 individuals, in studying the problems involved, and in planning,
13 establishing, developing, and providing necessary or desirable
14 programs, facilities, and services, including those jointly
15 administered with state agencies;

16 (2) enter into reciprocal agreements with other
17 states;

18 (3) establish or construct rehabilitation facilities
19 and workshops, contract with or provide grants to agencies,
20 organizations, or individuals as necessary to implement this
21 chapter, make contracts or other arrangements with public and other
22 nonprofit agencies, organizations, or institutions for the
23 establishment of workshops and rehabilitation facilities, and
24 operate facilities for carrying out the purposes of this chapter;

25 (4) conduct research and compile statistics relating
26 to the provision of services to or the need for services by disabled
27 individuals;

1 (5) provide for the establishment, supervision,
2 management, and control of small business enterprises to be
3 operated by individuals with significant disabilities where their
4 operation will be improved through the management and supervision
5 of the commission;

6 (6) contract with schools, hospitals, private
7 industrial firms, and other agencies and with doctors, nurses,
8 technicians, and other persons for training, physical restoration,
9 transportation, and other rehabilitation services; and

10 (7) assess the statewide need for services necessary
11 to prepare students with disabilities for a successful transition
12 to employment, establish collaborative relationships with each
13 school district with education service centers to the maximum
14 extent possible within available resources, and develop strategies
15 to assist vocational rehabilitation counselors in identifying and
16 reaching students in need of transition planning [~~contract with a~~
17 ~~public or private agency to provide and pay for rehabilitative~~
18 ~~services under the extended rehabilitation services program,~~
19 ~~including alternative sheltered employment or community integrated~~
20 ~~employment for a person participating in the program].~~

21 (b) Sections 111.002(7), 111.0525(a), and 111.073, Human
22 Resources Code, are repealed.

23 SECTION 2.108. Section 111.060, Human Resources Code, is
24 amended by adding Subsection (d) to read as follows:

25 (d) Notwithstanding any other provision of this section,
26 any money in the comprehensive rehabilitation fund may be used for
27 general governmental purposes if:

1 (1) the comptroller certifies that appropriations
2 from general revenue made by the preceding legislature for the
3 current biennium exceed available general revenues and cash
4 balances for the remainder of that biennium;

5 (2) an estimate of anticipated revenues for a
6 succeeding biennium prepared by the comptroller in accordance with
7 Section 49a, Article III, Texas Constitution, is less than the
8 revenues that are estimated at the same time by the comptroller to
9 be available for the current biennium; or

10 (3) the Legislative Budget Board otherwise determines
11 that a state fiscal emergency exists that requires use of any money
12 in the fund for general governmental purposes.

13 SECTION 2.109. (a) Subchapter I, Chapter 264, Family Code,
14 is transferred to Chapter 33, Education Code, is redesignated as
15 Subchapter E, Chapter 33, Education Code, and is amended to read as
16 follows:

17 SUBCHAPTER E [~~±~~]. COMMUNITIES IN SCHOOLS PROGRAM

18 Sec. 33.151 [~~264.751~~]. DEFINITIONS. In this subchapter:

19 (1) "Department" [~~"Agency"~~] means the Department of
20 Protective Services [~~Texas Education Agency~~].

21 (2) "Communities In Schools program" means an
22 exemplary youth dropout prevention program.

23 (3) "Delinquent conduct" has the meaning assigned by
24 Section 51.03, Family Code.

25 (4) "Student at risk of dropping out of school" means:
26 (A) a student at risk of dropping out of school as
27 defined [~~has the meaning assigned~~] by Section 29.081;

1 (B) [~~Education Code, or means~~] a student who is
2 eligible for a free or reduced lunch; or

3 (C) a student who is in family conflict or
4 crisis.

5 Sec. 33.152 [~~264.752~~]. STATEWIDE OPERATION OF PROGRAM. It
6 is the intent of the legislature that the Communities In Schools
7 program operate throughout this state. It is also the intent of the
8 legislature that programs established under Chapter 305, Labor
9 Code, as that chapter existed on August 31, 1999, and its
10 predecessor statute, the Texas Unemployment Compensation Act
11 (Article 5221b-9d, Vernon's Texas Civil Statutes), and programs
12 established under this subchapter shall remain eligible to
13 participate in the Communities In Schools program if funds are
14 available and if their performance meets the criteria established
15 by the agency [~~department~~] for renewal of their contracts.

16 Sec. 33.153 [~~264.753~~]. STATE DIRECTOR. The commissioner
17 [~~executive director of the department~~] shall designate a state
18 director for the Communities In Schools program.

19 Sec. 33.154 [~~264.754~~]. DUTIES OF STATE DIRECTOR. The state
20 director shall:

21 (1) coordinate the efforts of the Communities In
22 Schools program with other social service organizations and
23 agencies and with public school personnel to provide services to
24 students who are at risk of dropping out of school or engaging in
25 delinquent conduct, including students who are in family conflict
26 or emotional crisis;

27 (2) set standards for the Communities In Schools

1 program and establish state performance goals, objectives, and
2 measures for the program;

3 (3) obtain information to determine accomplishment of
4 state performance goals, objectives, and measures;

5 (4) promote and market the program in communities in
6 which the program is not established;

7 (5) help communities that want to participate in the
8 program establish a local funding base; and

9 (6) provide training and technical assistance for
10 participating communities and programs.

11 Sec. 33.155 [~~264.755~~]. DEPARTMENT [~~AGENCY~~] COOPERATION;
12 MEMORANDUM OF UNDERSTANDING. (a) The agency, the department, and
13 Communities In Schools, Inc. shall work together to maximize the
14 effectiveness of the Communities In Schools program.

15 (b) The agency and the department shall develop and
16 [~~mutually~~] agree to a memorandum of understanding to clearly define
17 the responsibilities of the agency and of the department under this
18 subchapter. The memorandum must address:

19 (1) the roles [~~role~~] of the agency and department in
20 encouraging local business to participate in local Communities In
21 Schools programs;

22 (2) the role of the agency in obtaining information
23 from participating school districts;

24 (3) the use of federal or state funds available to the
25 agency or the department for programs of this nature; and

26 (4) other areas identified by the agency and the
27 department that require clarification.

1 (c) The agency and the department shall adopt rules to
2 implement the memorandum and shall update the memorandum and rules
3 annually.

4 Sec. 33.156 [~~264.756~~]. FUNDING; EXPANSION OF
5 PARTICIPATION. (a) The agency [~~department~~] shall develop and
6 implement an equitable formula for the funding of local Communities
7 In Schools programs. The formula may provide for the reduction of
8 funds annually contributed by the state to a local program by an
9 amount not more than 50 percent of the amount contributed by the
10 state for the first year of the program. The formula must consider
11 the financial resources of individual communities and school
12 districts. Savings accomplished through the implementation of the
13 formula may be used to extend services to counties and
14 municipalities currently not served by a local program or to extend
15 services to counties and municipalities currently served by an
16 existing local program.

17 (b) Each local Communities In Schools program shall develop
18 a funding plan which ensures that the level of services is
19 maintained if state funding is reduced.

20 (c) A local Communities In Schools program may accept
21 federal funds, state funds, private contributions, grants, and
22 public and school district funds to support a campus participating
23 in the program.

24 Sec. 33.157 [~~264.757~~]. PARTICIPATION IN PROGRAM. An
25 elementary or secondary school receiving funding [~~designated~~]
26 under Section 33.156 [~~264.756~~] shall participate in a local
27 Communities In Schools program if the number of students enrolled

1 in the school who are at risk of dropping out of school is equal to
2 at least 10 percent of the number of students in average daily
3 attendance at the school, as determined by the agency.

4 Sec. 33.158 [~~264.758~~]. DONATIONS TO PROGRAM. (a) The
5 agency [~~department~~] may accept a donation of services or money or
6 other property that the agency [~~department~~] determines furthers the
7 lawful objectives of the agency [~~department~~] in connection with the
8 Communities In Schools program.

9 (b) Each donation, with the name of the donor and the
10 purpose of the donation, must be reported in the public records of
11 the agency [~~department~~].

12 (b) Section 302.062(g), Labor Code, is amended to read as
13 follows:

14 (g) Block grant funding under this section does not apply
15 to:

16 (1) the work and family policies program under Chapter
17 81;

18 (2) a program under the skills development fund
19 created under Chapter 303;

20 (3) the job counseling program for displaced
21 homemakers under Chapter 304;

22 (4) the Communities In Schools program under
23 Subchapter E [~~I~~], Chapter 33 [~~264~~], Education [~~Family~~] Code, to the
24 extent that funds are available to the commission for that program;

25 (5) the reintegration of offenders program under
26 Chapter 306;

27 (6) apprenticeship programs under Chapter 133,

1 Education Code;

2 (7) the continuity of care program under Section
3 501.095, Government Code;

4 (8) employment programs under Chapter 31, Human
5 Resources Code;

6 (9) the senior citizens employment program under
7 Chapter 101, Human Resources Code;

8 (10) the programs described by Section 302.021(b)(3);

9 (11) the community service program under the National
10 and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

11 (12) the trade adjustment assistance program under
12 Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et
13 seq.);

14 (13) the programs to enhance the employment
15 opportunities of veterans; and

16 (14) the functions of the State Occupational
17 Information Coordinating Committee.

18 (c) On September 1, 2003:

19 (1) all powers, duties, functions, and activities
20 relating to the Communities In Schools program assigned to or
21 performed by the Department of Protective Services immediately
22 before September 1, 2003, are transferred to the Texas Education
23 Agency;

24 (2) all funds, rights, obligations, and contracts of
25 the Department of Protective Services related to the Communities In
26 Schools program are transferred to the Texas Education Agency for
27 the Communities In Schools program;

1 (3) all property and records in the custody of the
2 Department of Protective Services related to the Communities In
3 Schools program and all funds appropriated by the legislature for
4 the Communities In Schools program are transferred to the Texas
5 Education Agency for the Communities In Schools program; and

6 (4) all employees of the Department of Protective
7 Services who primarily perform duties related to the Communities In
8 Schools program become employees of the Texas Education Agency, to
9 be assigned duties related to the Communities In Schools program.

10 (d) For the 2003 and 2004 state fiscal years, all full-time
11 equivalent positions (FTEs) authorized by the General
12 Appropriations Act for the Communities In Schools program are
13 transferred to the Texas Education Agency and are not included in
14 determining the agency's compliance with any limitation on the
15 number of full-time equivalent positions (FTEs) imposed by the
16 General Appropriations Act.

17 (e) A reference in law or administrative rule to the
18 Department of Protective Services that relates to the Communities
19 In Schools program means the Texas Education Agency. A reference in
20 law or administrative rule to the executive director of the
21 Department of Protective Services that relates to the Communities
22 In Schools program means the commissioner of education.

23 (f) A rule of the Department of Protective Services relating
24 to the Communities In Schools program continues in effect as a rule
25 of the commissioner of education until superseded by rule of the
26 commissioner of education. The secretary of state is authorized to
27 adopt rules as necessary to expedite the implementation of this

1 subsection.

2 (g) The transfer of the Communities In Schools program and
 3 associated powers, duties, functions, and activities under this
 4 section does not affect or impair any act done, any obligation,
 5 right, order, license, permit, rule, criterion, standard, or
 6 requirement existing, any investigation begun, or any penalty
 7 accrued under former law, and that law remains in effect for any
 8 action concerning those matters.

9 (h) An action brought or proceeding commenced before
 10 September 1, 2003, including a contested case or a remand of any
 11 action or proceeding by a reviewing court, is governed by the law
 12 and rules applicable to the action or proceeding immediately before
 13 September 1, 2003.

14 SECTION 2.110. (a) Sections 2(a) and (c), Article 4.11,
 15 Insurance Code, are amended to read as follows:

16 (a) "Carrier" means any insurer, managed care organization,
 17 or group hospital service plan transacting any such insurance
 18 business in this state including companies operating under the
 19 provisions of Chapters 841, 842, 843, 861, 881, 882, 883, 884, 941,
 20 942, and 982, [3, 8, 11, 13, 15, 18, 19, 20, 20A, and 22 of the]
 21 Insurance Code, Chapter 533, Government Code, or Title XIX of the
 22 federal Social Security Act. The term does not include [but
 23 excluding] local mutual aid associations, fraternal benefit
 24 societies or associations, and societies that limit their
 25 membership to one occupation. For purposes of computing the premium
 26 tax under this article, a managed care organization shall be
 27 treated in the same manner as a health maintenance organization.

1 (c) "Gross premiums" are the total gross amount of all
2 premiums, membership fees, assessments, dues, and any other
3 considerations for such insurance received during the taxable year
4 on each and every kind of such insurance policy or contract covering
5 persons located in the State of Texas and arising from the types of
6 insurance specified in Section 1 of this article, but deducting
7 returned premiums, any dividends applied to purchase paid-up
8 additions to insurance or to shorten the endowment or premium
9 payment period, and excluding those premiums received from
10 insurance carriers for reinsurance and there shall be no deduction
11 for premiums paid for reinsurance. For purposes of this article, a
12 stop-loss or excess loss insurance policy issued to a health
13 maintenance organization, as defined under the Texas Health
14 Maintenance Organization Act (Chapter 20A, Vernon's Texas
15 Insurance Code), shall be considered reinsurance. Such gross
16 premiums shall not include premiums received from the [~~Treasury of~~
17 ~~the State of Texas or from the~~] Treasury of the United States for
18 [~~insurance contracted for by the state or federal government for~~
19 ~~the purpose of providing welfare benefits to designated welfare~~
20 ~~recipients or for~~] insurance contracted for by the [~~state or~~
21 federal government in accordance with or in furtherance of the
22 provisions of Title XVIII of [~~2, Human Resources Code, or~~] the
23 Federal Social Security Act (42 U.S.C. Section 1395c et seq.) and
24 its subsequent amendments. The gross premiums receipts so reported
25 shall not include the amount of premiums paid on group health,
26 accident, and life policies in which the group covered by the policy
27 consists of a single nonprofit trust established to provide

1 coverage primarily for employees of:

2 (1) a municipality, county, or hospital district in
3 this state; or

4 (2) a county or municipal hospital, without regard to
5 whether the employees are employees of the county or municipality
6 or another entity operating the hospital on behalf of the county or
7 municipality.

8 (b) The change in law made by this section applies only to a
9 tax report originally due on or after January 1, 2004.

10 (c) The change in law made by this section expires December
11 31, 2007.

12 SECTION 2.111. (a) Article 4.17(a), Insurance Code, is
13 amended to read as follows:

14 (a) The commissioner shall annually determine the rate of
15 assessment of a maintenance tax to be paid on an annual, semiannual,
16 or other periodic basis, as determined by the comptroller. The rate
17 of assessment may not exceed .04 percent of the correctly reported
18 gross premiums of life, health, and accident insurance coverages
19 and the gross considerations for annuity and endowment contracts
20 collected by all authorized insurers writing life, health, and
21 accident insurance, annuity, or endowment contracts in this state.
22 The comptroller shall collect the maintenance tax. For purposes of
23 this article, the gross premiums on which an assessment is based may
24 not include premiums received from [~~this state or~~] the United
25 States for insurance contracted for by [~~this state or~~] the United
26 States [~~for the purpose of providing welfare benefits to designated~~
27 ~~welfare recipients or for insurance contracted for by this state or~~

1 ~~the United States]~~ in accordance with or in furtherance of Title
2 XVIII of [2, Human Resources Code, or] the federal Social Security
3 Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments
4 [~~(42 U.S.C. Section 301 et seq.)~~].

5 (b) The change in law made by this section applies only to a
6 tax report originally due on or after January 1, 2004.

7 (c) The change in law made by this section expires December
8 31, 2007.

9 SECTION 2.112. (a) Section 20A.33(d), Texas Health
10 Maintenance Organization Act (Article 20A.33, Vernon's Texas
11 Insurance Code), is amended to read as follows:

12 (d) The commissioner shall annually determine the rate of
13 assessment of a per capita maintenance tax to be paid on an annual
14 or semiannual basis, on the correctly reported gross revenues for
15 the issuance of health maintenance certificates or contracts
16 collected by all authorized health maintenance organizations
17 issuing such coverages in this state. The rate of assessment may
18 not exceed \$2 for each enrollee. The rate of assessment may differ
19 between basic health care plans, limited health care service plans,
20 and single health care service plans and shall equitably reflect
21 any differences in regulatory resources attributable to each type
22 of plan. The comptroller shall collect the maintenance tax. For
23 purposes of this section, the amount of maintenance tax assessed
24 may not be computed on enrollees who as individual certificate
25 holders or their dependents are covered by a master group policy
26 paid for by revenues received from [~~this state or~~] the United States
27 for insurance contracted for by [~~this state or~~] the United States

1 ~~[for the purpose of providing welfare benefits to designated~~
2 ~~welfare recipients or for insurance contracted for by this state or~~
3 ~~the United States]~~ in accordance with or in furtherance of Title
4 XVIII of [2, Human Resources Code, or] the federal Social Security
5 Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments
6 ~~[(42 U.S.C. Section 301 et seq.)]~~.

7 (b) The change in law made by this section applies only to a
8 tax report originally due on or after January 1, 2004.

9 (c) The change in law made by this section expires December
10 31, 2007.

11 SECTION 2.113. Section 2, Article 21.52K, Insurance Code,
12 is amended by amending Subsections (c) and (d) and adding
13 Subsection (g) to read as follows:

14 (c) If an individual described by Subsection (a), ~~(b)~~,
15 or (g) of this section is not eligible to enroll in the plan unless a
16 family member of the individual is also enrolled in the plan, the
17 issuer, on receipt of the written notice or request under
18 Subsection (a), ~~(b)~~, or (g) of this section, shall enroll both
19 the individual and the family member in the plan.

20 (d) Unless enrollment occurs during an established
21 enrollment period, enrollment under this article takes effect on
22 the first day of the calendar month that begins at least 30 days
23 after the date written notice or request is received by the issuer
24 under Subsection (a), ~~(b)~~, or (g) of this section.

25 (g) The issuer of a group health benefit plan shall permit
26 an individual who is otherwise eligible for enrollment in the plan
27 to enroll in the plan without regard to any enrollment period

1 restriction if the individual:

2 (1) becomes ineligible for medical assistance under
3 the state Medicaid program or enrollment in the state child health
4 plan under Chapter 62, Health and Safety Code, after initially
5 establishing eligibility; and

6 (2) provides a written request for enrollment in the
7 group health benefit plan not later than the 30th day after the date
8 the individual's eligibility for the state Medicaid program or the
9 state child health plan terminated.

10 SECTION 2.114. (a) Article 21.53F, Insurance Code, as
11 added by Chapter 683, Acts of the 75th Legislature, Regular
12 Session, 1997, is amended by adding Section 9 to read as follows:

13 Sec. 9. OFFER OF COVERAGE REQUIRED; CERTAIN THERAPIES FOR
14 CHILDREN WITH DEVELOPMENTAL DELAYS. (a) For purposes of this
15 section, rehabilitative and habilitative therapies include:

- 16 (1) occupational therapy evaluations and services;
17 (2) physical therapy evaluations and services;
18 (3) speech therapy evaluations and services; and
19 (4) dietary or nutritional evaluations.

20 (b) The issuer of a health benefit plan must offer coverage
21 that complies with this section. The individual or group policy or
22 contract holder may reject coverage required to be offered under
23 this subsection.

24 (c) A health benefit plan that provides coverage for
25 rehabilitative and habilitative therapies under this section may
26 not prohibit or restrict payment for covered services provided to a
27 child and determined to be necessary to and provided in accordance

1 with an individualized family service plan issued by the
2 Interagency Council on Early Childhood Intervention under Chapter
3 73, Human Resources Code.

4 (d) Rehabilitative and habilitative therapies described by
5 Subsection (c) of this section must be covered in the amount,
6 duration, scope, and service setting established in the child's
7 individualized family service plan.

8 (e) Under the coverage required to be offered under this
9 section, a health benefit plan issuer may not:

10 (1) apply the cost of rehabilitative and habilitative
11 therapies described by Subsection (c) of this section to an annual
12 or lifetime maximum plan benefit or similar provision under the
13 plan; or

14 (2) use the cost of rehabilitative or habilitative
15 therapies described by Subsection (c) of this section as the sole
16 justification for:

17 (A) increasing plan premiums; or

18 (B) terminating the insured's or enrollee's
19 participation in the plan.

20 (b) The change in law made by this section applies only to a
21 health benefit plan that is delivered, issued for delivery, or
22 renewed on or after January 1, 2004. A health benefit plan that is
23 delivered, issued for delivery, or renewed before January 1, 2004,
24 is governed by the law as it existed immediately before the
25 effective date of this section, and the former law is continued in
26 effect for that purpose.

27 SECTION 2.115. Article 27.05, Insurance Code, is amended to

1 read as follows:

2 Art. 27.05. EXEMPTION FROM PREMIUM TAX. The issuer of a
3 children's health benefit plan approved under Article 27.03 of this
4 code is not subject to the premium tax imposed by Article 4.11 of
5 this code or the tax on revenues imposed under Section 33, Texas
6 Health Maintenance Organization Act (Article 20A.33, Vernon's
7 Texas Insurance Code), with respect to money received for coverage
8 provided under that plan.

9 SECTION 2.116. Chapter 27, Insurance Code, is amended by
10 adding Article 27.07 to read as follows:

11 Art. 27.07. INAPPLICABILITY TO CERTAIN PLANS. This chapter
12 does not apply to a health benefit plan provided under the state
13 Medicaid program or the state child health plan.

14 SECTION 2.117. Subchapter C, Chapter 562, Occupations Code,
15 is amended by adding Sections 562.1085 and 562.1086 to read as
16 follows:

17 Sec. 562.1085. UNUSED DRUGS RETURNED BY CERTAIN
18 PHARMACISTS. (a) A pharmacist who practices in or serves as a
19 consultant for a health care facility in this state may return to a
20 pharmacy certain unused drugs, other than a controlled substance as
21 defined by Chapter 481, Health and Safety Code, purchased from the
22 pharmacy as provided by board rule. The unused drugs must:

23 (1) be approved by the federal Food and Drug
24 Administration and be:

25 (A) sealed in the manufacturer's original
26 unopened tamper-evident packaging and either individually
27 packaged or packaged in unit-dose packaging;

1 (B) oral or parenteral medication in sealed
2 single-dose containers approved by the federal Food and Drug
3 Administration;

4 (C) topical or inhalant drugs in sealed
5 units-of-use containers approved by the federal Food and Drug
6 Administration; or

7 (D) parenteral medications in sealed
8 multiple-dose containers approved by the federal Food and Drug
9 Administration from which doses have not been withdrawn; and

10 (2) not be the subject of a mandatory recall by a state
11 or federal agency or a voluntary recall by a drug seller or
12 manufacturer.

13 (b) A pharmacist for the pharmacy shall examine a drug
14 returned under this section to ensure the integrity of the drug
15 product. A health care facility may not return a drug that:

16 (1) has been compounded;

17 (2) appears on inspection to be adulterated;

18 (3) requires refrigeration; or

19 (4) has less than 120 days until the expiration date or
20 end of the shelf life.

21 (c) The pharmacy may restock and redistribute unused drugs
22 returned under this section.

23 (d) The pharmacy shall reimburse or credit the state
24 Medicaid program for an unused drug returned under this section.

25 (e) The board shall adopt the rules, policies, and
26 procedures necessary to administer this section, including rules
27 that require a health care facility to inform the Health and Human

1 Services Commission of medicines returned to a pharmacy under this
2 section.

3 Sec. 562.1086. LIMITATION ON LIABILITY. (a) A pharmacy that
4 returns unused drugs and a manufacturer that accepts the unused
5 drugs under Section 562.1085 and the employees of the pharmacy or
6 manufacturer are not liable for harm caused by the accepting,
7 dispensing, or administering of drugs returned in strict compliance
8 with Section 562.1085 unless the harm is caused by:

9 (1) wilful or wanton acts of negligence;

10 (2) conscious indifference or reckless disregard for
11 the safety of others; or

12 (3) intentional conduct.

13 (b) This section does not limit, or in any way affect or
14 diminish, the liability of a drug seller or manufacturer under
15 Chapter 82, Civil Practice and Remedies Code.

16 (c) This section does not apply if harm results from the
17 failure to fully and completely comply with the requirements of
18 Section 562.1085.

19 (d) This section does not apply to a pharmacy or
20 manufacturer that fails to comply with the insurance provisions of
21 Chapter 84, Civil Practice and Remedies Code.

22 SECTION 2.118. Section 455.0015, Transportation Code, is
23 amended by amending Subsection (b) and adding Subsections (c) and
24 (d) to read as follows:

25 (b) It is the intent of the legislature that, whenever
26 possible, and to the maximum extent feasible, the existing network
27 of transportation providers, and in particular the fixed route

1 components of the existing networks, be used to meet the client
2 transportation requirements of the state's social service agencies
3 and their agents. The legislature recognizes the contributions of
4 nonprofit entities dedicated to providing social services and
5 related activities and encourages the continued community
6 involvement of these entities in this area. The legislature
7 likewise recognizes the potential cost savings and other benefits
8 for utilizing existing private sector transportation resources.
9 The department will contract with and promote the use of private
10 sector transportation resources to the maximum extent feasible
11 consistent with the goals of this subsection.

12 (c) The Texas Department of Health and the Health and Human
13 Services Commission shall contract with the department for the
14 department to assume all responsibilities of the Texas Department
15 of Health and the Health and Human Services Commission relating to
16 the provision of transportation services for clients of eligible
17 programs.

18 (d) The department may contract with any public or private
19 transportation provider or with any regional transportation broker
20 for the provision of public transportation services.

21 SECTION 2.119. Section 40.002, Human Resources Code, is
22 amended by adding Subsection (f) to read as follows:

23 (f) The department may contract with the Texas Department of
24 Transportation for the Texas Department of Transportation to assume
25 all responsibilities of the department relating to the provision of
26 transportation services for clients of eligible programs.

27 SECTION 2.120. Section 22.001, Human Resources Code, is

1 amended by adding Subsection (e) to read as follows:

2 (e) The department shall contract with the Texas Department
3 of Transportation for the Texas Department of Transportation to
4 assume all responsibilities of the department relating to the
5 provision of transportation services for clients of eligible
6 programs.

7 SECTION 2.121. Section 91.021, Human Resources Code, is
8 amended by adding Subsection (g) to read as follows:

9 (g) The commission shall contract with the Texas Department
10 of Transportation for the Texas Department of Transportation to
11 assume all responsibilities of the commission relating to the
12 provision of transportation services for clients of eligible
13 programs.

14 SECTION 2.122. Section 101.0256, Human Resources Code, is
15 amended to read as follows:

16 Sec. 101.0256. COORDINATED ACCESS TO LOCAL
17 SERVICES. (a) The department and the Texas Department of Human
18 Services shall develop standardized assessment procedures to share
19 information on common clients served in a similar service region.

20 (b) The department shall contract with the Texas Department
21 of Transportation for the Texas Department of Transportation to
22 assume all responsibilities of the department relating to the
23 provision of transportation services for clients of eligible
24 programs.

25 SECTION 2.123. Section 111.0525, Human Resources Code, is
26 amended by adding Subsection (d) to read as follows:

27 (d) The commission shall contract with the Texas Department

1 of Transportation for the Texas Department of Transportation to
2 assume all responsibilities of the commission relating to the
3 provision of transportation services for clients of eligible
4 programs.

5 SECTION 2.124. Section 461.012(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) The commission shall:

8 (1) provide for research and study of the problems of
9 chemical dependency in this state and seek to focus public
10 attention on those problems through public information and
11 education programs;

12 (2) plan, develop, coordinate, evaluate, and
13 implement constructive methods and programs for the prevention,
14 intervention, treatment, and rehabilitation of chemical dependency
15 in cooperation with federal and state agencies, local governments,
16 organizations, and persons, and provide technical assistance,
17 funds, and consultation services for statewide and community-based
18 services;

19 (3) cooperate with and enlist the assistance of:

20 (A) other state, federal, and local agencies;

21 (B) hospitals and clinics;

22 (C) public health, welfare, and criminal justice
23 system authorities;

24 (D) educational and medical agencies and
25 organizations; and

26 (E) other related public and private groups and
27 persons;

1 (4) expand chemical dependency services for children
2 when funds are available because of the long-term benefits of those
3 services to the state and its citizens;

4 (5) sponsor, promote, and conduct educational
5 programs on the prevention and treatment of chemical dependency,
6 and maintain a public information clearinghouse to purchase and
7 provide books, literature, audiovisuals, and other educational
8 material for the programs;

9 (6) sponsor, promote, and conduct training programs
10 for persons delivering prevention, intervention, treatment, and
11 rehabilitation services and for persons in the criminal justice
12 system or otherwise in a position to identify chemically dependent
13 persons and their families in need of service;

14 (7) require programs rendering services to chemically
15 dependent persons to safeguard those persons' legal rights of
16 citizenship and maintain the confidentiality of client records as
17 required by state and federal law;

18 (8) maximize the use of available funds for direct
19 services rather than administrative services;

20 (9) consistently monitor the expenditure of funds and
21 the provision of services by all grant and contract recipients to
22 assure that the services are effective and properly staffed and
23 meet the standards adopted under this chapter;

24 (10) make the monitoring reports prepared under
25 Subdivision (9) a matter of public record;

26 (11) license treatment facilities under Chapter 464;

27 (12) use funds appropriated to the commission to carry

1 out this chapter and maximize the overall state allotment of
2 federal funds;

3 (13) develop and implement policies that will provide
4 the public with a reasonable opportunity to appear before the
5 commission and to speak on any issue under the commission's
6 jurisdiction;

7 (14) establish minimum criteria that peer assistance
8 programs must meet to be governed by and entitled to the benefits of
9 a law that authorizes licensing and disciplinary authorities to
10 establish or approve peer assistance programs for impaired
11 professionals;

12 (15) adopt rules governing the functions of the
13 commission, including rules that prescribe the policies and
14 procedures followed by the commission in administering any
15 commission programs;

16 (16) plan, develop, coordinate, evaluate, and
17 implement constructive methods and programs to provide healthy
18 alternatives for youth at risk of selling controlled substances;

19 (17) submit to the federal government reports and
20 strategies necessary to comply with Section 1926 of the federal
21 Alcohol, Drug Abuse, and Mental Health Administration
22 Reorganization Act, Pub. L. 102-321 (42 U.S.C. Section 300x-26);
23 reports and strategies are to be coordinated with appropriate state
24 governmental entities; ~~and~~

25 (18) regulate, coordinate, and provide training for
26 alcohol awareness courses required under Section 106.115,
27 Alcoholic Beverage Code, and may charge a fee for an activity

1 performed by the commission under this subdivision; and

2 (19) contract with the Texas Department of
3 Transportation for the Texas Department of Transportation to assume
4 all responsibilities of the commission relating to the provision of
5 transportation services for clients of eligible programs.

6 SECTION 2.125. Section 533.012, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 533.012. COOPERATION OF STATE AGENCIES. (a) At the
9 department's request, all state departments, agencies, officers,
10 and employees shall cooperate with the department in activities
11 that are consistent with their functions.

12 (b) The department shall contract with the Texas Department
13 of Transportation for the Texas Department of Transportation to
14 assume all responsibilities of the department relating to the
15 provision of transportation services for clients of eligible
16 programs.

17 SECTION 2.126. (a) Section 1551.159, Insurance Code, as
18 effective June 1, 2003, is amended by amending Subsection (a) and
19 adding Subsection (h) to read as follows:

20 (a) Subject to any applicable limit in the General
21 Appropriations Act, the board of trustees shall use money
22 appropriated for employer contributions to fund 80 percent of the
23 cost of basic coverage for a child who:

24 (1) is a dependent of an employee;

25 (2) would be eligible, if the child were not the
26 dependent of the employee, for benefits under the state child
27 health plan established under Chapter 62, Health and Safety Code

1 ~~[the program established by the state to implement Title XXI,~~
2 ~~Social Security Act (42 U.S.C. Section 1397aa et seq.), as~~
3 ~~amended]; and~~

4 (3) is not eligible for the state Medicaid program.

5 (h) A child enrolled in dependent child coverage under this
6 section is subject to the same requirements and restrictions
7 relating to income eligibility, continuous coverage, and
8 enrollment, including applicable waiting periods, as a child
9 enrolled in the state child health plan under Chapter 62, Health and
10 Safety Code.

11 (b) The change in law made by this section applies only to a
12 child enrolled in dependent child coverage under the state
13 employees group benefits program on and after September 1, 2003.

14 SECTION 2.127. Section 31.03, Penal Code, is amended by
15 adding Subsection (j) to read as follows:

16 (j) With the consent of the appropriate local county or
17 district attorney, the attorney general has concurrent
18 jurisdiction with that consenting local prosecutor to prosecute an
19 offense under this section that involves the state Medicaid
20 program.

21 SECTION 2.128. Section 32.45, Penal Code, is amended by
22 adding Subsection (d) to read as follows:

23 (d) With the consent of the appropriate local county or
24 district attorney, the attorney general has concurrent
25 jurisdiction with that consenting local prosecutor to prosecute an
26 offense under this section that involves the state Medicaid
27 program.

1 SECTION 2.129. Section 32.46, Penal Code, is amended by
2 adding Subsection (e) to read as follows:

3 (e) With the consent of the appropriate local county or
4 district attorney, the attorney general has concurrent
5 jurisdiction with that consenting local prosecutor to prosecute an
6 offense under this section that involves the state Medicaid
7 program.

8 SECTION 2.130. Section 37.10, Penal Code, is amended by
9 adding Subsection (i) to read as follows:

10 (i) With the consent of the appropriate local county or
11 district attorney, the attorney general has concurrent
12 jurisdiction with that consenting local prosecutor to prosecute an
13 offense under this section that involves the state Medicaid
14 program.

15 SECTION 2.131. Section 57.046, Utilities Code, is amended
16 by adding Subsection (c) to read as follows:

17 (c) In addition to the purposes for which the qualifying
18 entities account may be used, the board may use money in the account
19 to award grants to the Health and Human Services Commission for
20 technology initiatives of the commission.

21 SECTION 2.132. Articles 59.01(1) and (2), Code of Criminal
22 Procedure, are amended to read as follows:

23 (1) "Attorney representing the state" means the
24 prosecutor with felony jurisdiction in the county in which a
25 forfeiture proceeding is held under this chapter or, in a
26 proceeding for forfeiture of contraband as defined under
27 Subdivision (2)(B)(iv) of this article, the city attorney of a

1 municipality if the property is seized in that municipality by a
2 peace officer employed by that municipality and the governing body
3 of the municipality has approved procedures for the city attorney
4 acting in a forfeiture proceeding. In a proceeding for forfeiture
5 of contraband as defined under Subdivision (2)(B)(vii) of this
6 article, the term includes the attorney general.

7 (2) "Contraband" means property of any nature,
8 including real, personal, tangible, or intangible, that is:

9 (A) used in the commission of:

10 (i) any first or second degree felony under
11 the Penal Code;

12 (ii) any felony under Section 15.031(b),
13 21.11, 38.04, 43.25, or 43.26 or Chapter 29, 30, 31, 32, 33, 33A, or
14 35, Penal Code; or

15 (iii) any felony under The Securities Act
16 (Article 581-1 et seq., Vernon's Texas Civil Statutes);

17 (B) used or intended to be used in the commission
18 of:

19 (i) any felony under Chapter 481, Health
20 and Safety Code (Texas Controlled Substances Act);

21 (ii) any felony under Chapter 483, Health
22 and Safety Code;

23 (iii) a felony under Chapter 153, Finance
24 Code;

25 (iv) any felony under Chapter 34, Penal
26 Code;

27 (v) a Class A misdemeanor under Subchapter

1 B, Chapter 365, Health and Safety Code, if the defendant has been
2 previously convicted twice of an offense under that subchapter;
3 [~~or~~]

4 (vi) any felony under Chapter 152, Finance
5 Code; or

6 (vii) any felony under Chapter 31, 32, or
7 37, Penal Code, that involves the state Medicaid program, or any
8 felony under Chapter 36, Human Resources Code;

9 (C) the proceeds gained from the commission of a
10 felony listed in Paragraph (A) or (B) of this subdivision or a crime
11 of violence; or

12 (D) acquired with proceeds gained from the
13 commission of a felony listed in Paragraph (A) or (B) of this
14 subdivision or a crime of violence.

15 SECTION 2.133. Article 59.06, Code of Criminal Procedure,
16 is amended by adding Subsection (p) to read as follows:

17 (p) Notwithstanding Subsection (a), and to the extent
18 necessary to protect the commission's ability to recover amounts
19 wrongfully obtained by the owner of the property and associated
20 damages and penalties to which the commission may otherwise be
21 entitled by law, the attorney representing the state shall transfer
22 to the Health and Human Services Commission all forfeited property
23 defined as contraband under Article 59.01(2)(B)(vii). If the
24 forfeited property consists of property other than money or
25 negotiable instruments, the attorney representing the state may, if
26 approved by the commission, sell the property and deliver to the
27 commission the proceeds from the sale, minus costs attributable to

1 the sale. The sale must be conducted in a manner that is reasonably
2 expected to result in receiving the fair market value for the
3 property.

4 SECTION 2.134. STUDY. (a) The Medicaid and Public
5 Assistance Fraud Oversight Task Force, with the participation of
6 the Texas Department of Health's bureau of vital statistics and
7 other agencies designated by the comptroller, shall study
8 procedures and documentation requirements used by the state in
9 confirming a person's identity for purposes of establishing
10 entitlement to Medicaid and other benefits provided through health
11 and human services programs.

12 (b) Not later than December 1, 2004, the Medicaid and Public
13 Assistance Fraud Oversight Task Force, with assistance from the
14 agencies participating in the study required by Subsection (a) of
15 this section, shall submit a report to the legislature containing
16 recommendations for improvements in the procedures and
17 documentation requirements described by Subsection (a) of this
18 section that would strengthen the state's ability to prevent fraud
19 and abuse in the Medicaid program and other health and human
20 services programs.

21 [SECTION 2.135 reserved]

22 SECTION 2.136. STUDY: REVENUE ENHANCEMENT RELATED TO
23 MEDICAID VENDOR DRUG REBATE. (a) A task force is created to study
24 the prescription drug rebate system established and operated under
25 the medical assistance program and other related programs.

26 (b) The commission shall establish a task force, composed of
27 appropriate legislators, state agency personnel, and other

1 appropriate personnel to study the prescription drug rebate system
2 established and operated under the medical assistance program and
3 other related programs.

4 (c) The study must include:

5 (1) a background on the development and operation of
6 the federal vendor drug rebate and state supplemental rebate
7 system;

8 (2) a description of current and historical state
9 efforts to develop and implement alternatives to the federal vendor
10 drug rebate system;

11 (3) a review of any relevant case law or legal
12 precedents related to the vendor drug rebate system;

13 (4) an analysis of state implementation, including
14 attempted implementation, of an exemption of federal requirements,
15 including the federal Social Security Act, related to vendor drug
16 rebates, prior authorization provisions, and formulary; and

17 (5) feasibility of developing either an alternative
18 rebate system or other mechanism to enhance the state's share of
19 prescription drug rebates.

20 (d) The study must be completed by December 1, 2004, and
21 presented to the governor and the presiding officers of each house,
22 the House Committee on Appropriations, and the Senate Finance
23 Committee.

24 SECTION 2.137. LEGISLATIVE INTENT REGARDING PROVISION OF
25 HEALTH AND HUMAN SERVICE TRANSPORTATION THROUGH THE TEXAS
26 DEPARTMENT OF TRANSPORTATION. It is the intent of the legislature
27 that the provision of health and human service transportation

1 through the Texas Department of Transportation will improve the
2 delivery of transportation services to clients and enhance their
3 access to transportation services. Furthermore, it is the intent
4 of the legislature that these services be provided in a manner that
5 will generate efficiencies in operation, control costs, and permit
6 increased levels of service. The Texas Department of
7 Transportation shall encourage cooperation and coordination among
8 transportation providers, regional transportation brokers, and
9 actual and potential clients in an effort to achieve the stated
10 legislative goals.

11 SECTION 2.138. (a) A change in law made by this article to
12 Section 242.047, Health and Safety Code, that requires the Texas
13 Department of Health to accept an annual accreditation review from
14 the Joint Commission on Accreditation of Health Organizations for a
15 nursing home in satisfaction of the requirements for certification:

16 (1) applies only to a nursing home that participates
17 in the medical assistance program under Chapter 32, Human Resources
18 Code, before September 1, 2003; and

19 (2) may be implemented only as a pilot program.

20 (b) A pilot program operated in accordance with this section
21 expires September 1, 2007.

22 SECTION 2.139. (a) The Texas State Board of Pharmacy shall
23 adopt the rules required by Section 562.1085, Occupations Code, as
24 added by this Act, not later than December 1, 2003.

25 (b) Notwithstanding Section 562.1085, Occupations Code, as
26 added by this Act, a pharmacy is not required to accept unused drugs
27 from a health care facility before January 1, 2004.

1 SECTION 2.140. The Health and Human Services Commission
2 shall adopt the rules required by Sections 32.028(i) and (j), Human
3 Resources Code, as added by this Act, not later than December 1,
4 2003.

5 SECTION 2.141. TRANSFER OF MEDICAL TRANSPORTATION PROGRAM.

6 (a) On September 1, 2004, or on an earlier date specified by the
7 Health and Human Services Commission:

8 (1) all powers, duties, functions, activities,
9 obligations, rights, contracts, records, property, and
10 appropriations or other money of the Texas Department of Health
11 that are determined by the commissioner of health and human
12 services to be essential to the administration of the medical
13 transportation program are transferred to the Health and Human
14 Services Commission;

15 (2) a rule or form adopted by the Texas Department of
16 Health that relates to the medical transportation program is a rule
17 or form of the Health and Human Services Commission and remains in
18 effect until altered by the commission;

19 (3) a reference in law or an administrative rule to the
20 Texas Department of Health that relates to the medical
21 transportation program means the Health and Human Services
22 Commission;

23 (4) a license, permit, or certification in effect that
24 was issued by the Texas Department of Health and that relates to the
25 medical transportation program is continued in effect as a license,
26 permit, or certification of the Health and Human Services
27 Commission; and

1 (5) a complaint, investigation, or other proceeding
2 pending before the Texas Department of Health that relates to the
3 medical transportation program is transferred without change in
4 status to the Health and Human Services Commission.

5 (b) The Health and Human Services Commission shall take all
6 action necessary to provide for the transfer of the medical
7 transportation program to the commission as soon as possible after
8 the effective date of this section but not later than September 1,
9 2004.

10 SECTION 2.142. CONSOLIDATION OF CERTAIN DIVISIONS AND
11 ACTIVITIES. (a) Not later than March 1, 2004, the Health and Human
12 Services Commission shall consolidate the Medicaid post-payment
13 third-party recovery divisions or activities of the Texas
14 Department of Human Services, the Medicaid vendor drug program, and
15 the state's Medicaid claims administrator with the Medicaid
16 post-payment third-party recovery function.

17 (b) The Health and Human Services Commission shall use the
18 commission's Medicaid post-payment third-party recovery contractor
19 for the consolidated division.

20 (c) The Health and Human Services Commission shall update
21 its computer system to facilitate the consolidation.

22 SECTION 2.143. ABOLITION OF ADVISORY COMMITTEES. (a)
23 Notwithstanding any other provision of state law, each advisory
24 committee, as that term is defined by Section 2110.001, Government
25 Code, created before the effective date of this section that
26 advises a health and human services agency is abolished on the
27 effective date of this section unless the committee:

1 (1) is required by federal law; or

2 (2) advises an agency with respect to certification or
3 licensing programs, the regulation of entities providing health and
4 human services, or the implementation of a duty prescribed under
5 this article, as determined by the commissioner of health and human
6 services.

7 (b) The commissioner of health and human services shall
8 certify which advisory committees are exempt from abolition under
9 Subsection (a) of this section and shall publish that certification
10 in the Texas Register.

11 (c) An advisory committee that is created on or after the
12 effective date of this section or that is exempt under Subsection
13 (b) of this section from abolition shall make recommendations to
14 the executive director of the health and human services agency the
15 advisory committee was created to advise and to the commissioner of
16 health and human services to assist with eliminating or minimizing
17 overlapping functions or required duties between the health and
18 human services agencies or between those agencies and the Health
19 and Human Services Commission.

20 SECTION 2.144. Community mental health centers may
21 coordinate with local community health centers, federally
22 qualified health centers (FQHC), and/or disproportionate share
23 hospitals for the purpose of accessing local, state, and federal
24 programs that could result in lower cost pharmaceuticals. In
25 particular, community mental health centers may form a referral
26 relationship with community health centers, federally qualified
27 health centers (FQHC), disproportionate share hospitals, and/or

1 other eligible entities for the purpose of obtaining federal 340B
2 pricing for pharmaceuticals. Community mental health centers may
3 form a referral relationship with community health centers,
4 federally qualified health centers (FQHC), disproportionate share
5 hospitals, and/or other eligible entities for the purpose of taking
6 advantage of 340B or other lower cost drug programs regardless of
7 any statewide preferred drug list or vendor drug program which may
8 be adopted.

9 SECTION 2.145. CHILD HEALTH PLAN PROGRAM WAIVER. Not later
10 than October 1, 2003, the Health and Human Services Commission
11 shall request and actively pursue any necessary waivers from a
12 federal agency or any other appropriate entity to allow families
13 enrolled in the state Medicaid program to opt into the child health
14 plan program under Chapter 62, Health and Safety Code, while
15 retaining the appropriate federal match rate and the child's
16 entitlement to Medicaid coverage. The waiver shall, on at least an
17 annual basis, allow families eligible for Medicaid who have
18 previously opted to enroll their children in the child health plan
19 program under Chapter 62, Health and Safety Code, to return those
20 children to the Medicaid program.

21 SECTION 2.146. STATE CHILD HEALTH PLAN AMENDMENT. (a) In
22 this section, "group plan" means the group health benefit plan
23 under the health insurance premium payment reimbursement program
24 established under Section 62.059, Health and Safety Code.

25 (b) As soon as possible after the effective date of this
26 section, the Health and Human Services Commission shall submit for
27 approval a plan amendment relating to the state child health plan

1 under 42 U.S.C. Section 1397ff, as amended, as necessary to include
2 the employers' share of required premiums for coverage of
3 individuals enrolled in the group plan as expenditures for the
4 purpose of determining the state children's health insurance
5 expenditures, as that term is defined by 42 U.S.C. Section
6 1397ee(d)(2)(B), as amended, for federal match funding for the
7 child health plan program provided under Chapter 62, Health and
8 Safety Code.

9 SECTION 2.147. STATE MEDICAID PLAN AMENDMENT. (a) In this
10 section, "group plan" means the group health benefit plan under the
11 health insurance premium payment reimbursement program for
12 Medicaid recipients established under Section 32.0422, Human
13 Resources Code.

14 (b) As soon as possible after the effective date of this
15 section, the Health and Human Services Commission shall submit an
16 amendment to the state Medicaid plan as necessary to allow this
17 state to include the employers' share of required premiums for
18 coverage of individuals enrolled in the group plan as expenditures
19 for the purpose of determining this state's Medicaid program
20 expenditures for federal match funding for the state Medicaid
21 program.

22 SECTION 2.148. REPEAL. (a) The following are repealed:
23 Sections 62.055(b) and (c), 62.056, 62.057, 142.006(d), (e), and
24 (f), 142.009(i), 142.0176, 252.206(d), and 252.207(b), Health and
25 Safety Code.

26 (b) An advisory committee established under Section 62.057,
27 Health and Safety Code, is abolished on the effective date of this

1 section.

2 SECTION 2.149. In the event of a conflict between a
3 provision of this Act and another Act passed by the 78th
4 Legislature, Regular Session, 2003, that becomes law, this Act
5 prevails and controls regardless of the relative dates of
6 enactment.

7 SECTION 2.150. FEDERAL AUTHORIZATION OR WAIVER. If before
8 implementing any provision of this Act a state agency determines
9 that a waiver or authorization from a federal agency is necessary
10 for implementation of that provision, the agency affected by the
11 provision shall request the waiver or authorization and may delay
12 implementing that provision until the waiver or authorization is
13 granted.

14 SECTION 2.151. Any funds that are used by the Texas
15 Department of Transportation to implement the transportation
16 services provided in Sections 2.118, 2.119, 2.120, 2.121, 2.122,
17 2.123, 2.124, and 2.125 of this Act shall be accounted for and
18 budgeted separately from other funds appropriated to the Texas
19 Department of Transportation for any other public transportation
20 program or budget strategy.

21 SECTION 2.152. EFFECTIVE DATE. Except as otherwise
22 provided by this article, this article takes effect September 1,
23 2003.